

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 683.

THE UNITED STATES, PLAINTIFF IN ERROR,

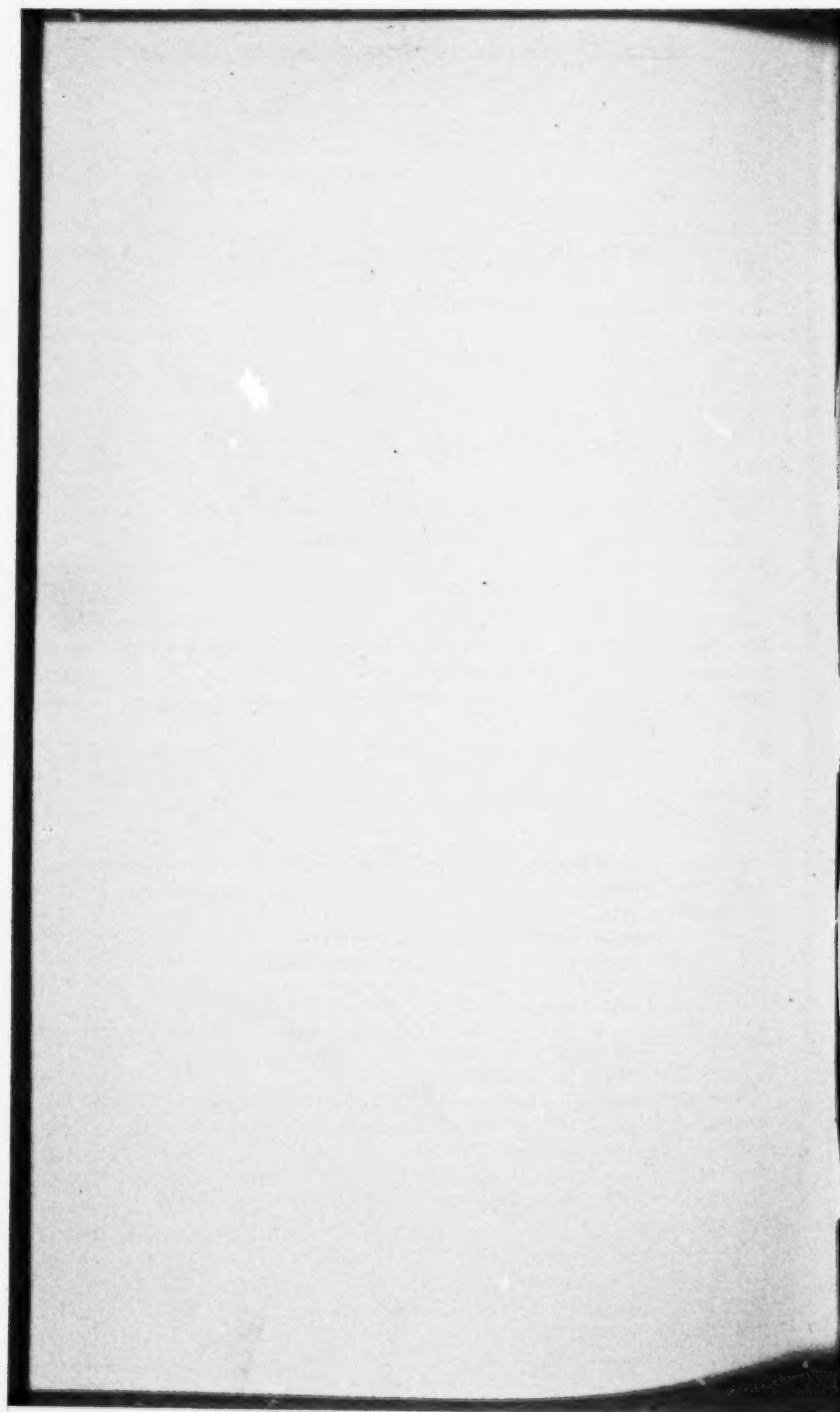
vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER, JESSE
CARR, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF RHODE ISLAND.

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Writ of error. (Issued August 24, 1916.)

The President of the United States to the honorable the judge of the District Court of the United States for the First Circuit, District of Rhode Island, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America and Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, a manifest error hath happened, to the great damage of the said United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the twenty-second day of September, A. D. 1916, in the said Supreme Court, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

2 Witness the honorable Edward D. White, Chief Justice of the United States, this twenty-fourth day of August, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

WILLIAM P. CROSS,

Clerk, U. S. District Court, District of Rhode Island.

Allowed by—

ARTHUR L. BROWN,

*United States District Judge for the
District of Rhode Island.**Return of District Court on writ of error.*

DISTRICT COURT OF THE UNITED STATES, } ss:
District of Rhode Island,

And now, here, the judge of the District Court of the United States in and for the District of Rhode Island make return of this writ by annexing hereto and sending herewith under the seal of the said district court a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, William P. Cross, clerk of said District Court of the United States in and for the District of Rhode Island, have hereto set my hand and the seal of said court this 12 day of Sept., A. D. 1916.

[SEAL.]

WILLIAM P. CROSS, *Clerk.*

Transcript of record on appeal.

UNITED STATES OF AMERICA, }
 District of Rhode Island, } ss:

At the District Court of the United States begun and holden at Providence within and for the district of Rhode Island, on the 23rd day of May, in the year of our Lord 1916. Present: The honorable Arthur L. Brown, district judge.

THE UNITED STATES
 vs.

MATTHEW T. GRADWELL AND 13 OTHERS.

} Ind. No. 114.

This indictment was found by the grand jury and returned into the clerk's office on the 28th day of June, 1915, and is in the following figures and words:

Indictment.

DISTRICT OF RHODE ISLAND, ss:

The grand jurors of the United States of America, impaneled, sworn, and charged, in the District Court of the United States of America, at the May term of said court in the year 1915, and inquiring for that district upon their oath present, that, during the year 1914 and particularly on the third day of November, 1914, Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, hereinafter referred to as defendants, each late of the town of Coventry, in the county of Kent, in said district of Rhode Island, and Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), (said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), by reason of the fact that they have testified before said grand jurors concerning the matters in this indictment charged, not being here indicted), at said town of Coventry, in said district of Rhode Island, did unlawfully,
 4 knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with divers other persons to the said grand jurors unknown, to defraud the United States by corrupting and debauching the general election held in the town of Coventry, in the county of Kent, and the State of Rhode Island, on, to wit, November 3rd, 1914, at which said election a candidate for Representative in Congress was voted for, chosen, and elected in said second congressional district of Rhode Island, which said town of Coventry on November 3rd, 1914, was and is still a part of the second congressional district of the State of Rhode Island in the manner following—that is to say, said defendants did devise a scheme to bribe, influence, corrupt, and debauch

the voters of the town of Coventry, on, to wit, the third day of November, 1914, at which time and place a general election was held for the election of State officers and for a Representative in Congress, which said scheme was as follows: The said defendants and certain persons who were to act under the direction and control of said defendants were to give to voters and electors in the town of Coventry on said election day, to wit, the third day of November, 1914, who voted as the defendants directed and influenced said electors and voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control, brass checks with certain stamps thereon, which said brass checks were given to said voters and electors by said defendants and persons acting under their direction and control, in payment for the said voters and electors having voted as said defendants, and the persons acting under their direction and control directed and influenced said voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control;

5 and the said defendants were to pay for and redeem said brass checks given to voters as aforesaid at some time after said election day, by giving and paying to said voters who were given checks as aforesaid on election day, to wit, the third day of November, 1914, as aforesaid, for said checks a sum of money, to wit, five dollars, which said sum of money was to be given and paid to said voters and electors in payment for having voted as directed by said defendants and the persons who acted under their direction and control, and for having voted in a manner satisfactory to said defendants and the persons acting under their direction and control, and said defendants and certain persons acting under their direction and control were to pay to voters and electors for voting as the said defendants and persons acting under their direction and control of said defendants directed said voters to vote, and for voting in a manner satisfactory to said defendants, a certain sum of money, to wit, five dollars, which said money was to be paid to said voters for having voted as directed by said defendants and the persons acting under their direction and control, and for having voted in a manner satisfactory to said defendants and the persons acting under their direction and control.

And at said time and place, as a part of said conspiracy, said defendants did unlawfully, knowingly, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States by corrupting and debauching the general election held in the town of Coventry, in the county of Kent, and State of Rhode Island, on, to wit, the third day of November, 1914, which said town of Coventry, on November 3rd, 1914, was and still is a part of the second congressional district of the State

6 of Rhode Island, at which said election a candidate for Repre-

sentatives in Congress was voted for, chosen, and elected in said second congressional district, in the manner following: The said defendants and certain persons who were to act under the direction and control of said defendants were to distribute to voters and electors of the town of Coventry, on said election day, to wit, the third day of November, 1914, certain brass checks, commonly called "beer checks," which said checks were to be good for a bottle of beer to be furnished by said defendants, with the intention on behalf of said defendants to corrupt, bribe, and influence said electors and voters in the town of Coventry, and with the purpose and intention of depriving the United States of the right to a fair and clean election, on said third day of November, at which said election a Representative in Congress for the second congressional district of Rhode Island was to be elected.

And at said time and place, and as a part of said conspiracy, and for said purpose, and with intention to defraud the United States, said defendants did unlawfully, knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together with said Calvin E. Hopkins (alias E. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) to corruptly and fraudulently influence and bribe, and after having corruptly and fraudulently influenced and bribed to vote and cause to be voted for a candidate for Representative in Congress at said election at the voting place in said town of Coventry, a large number of persons who had and possessed the qualifications requisite for electors for said

7 Representative in Congress, as provided in article 1, section 2, of the Constitution of the United States of America, and at said time and place, and with intention to defraud the United States, did unlawfully, knowingly, wilfully, wrongfully, fraudulently, corruptly, and feloniously influence and bribe, and after having so fraudulently and corruptly influenced and bribed, did vote and cause to be voted for a candidate for Representative in Congress at said election, held in the town of Coventry, at which election a Representative in Congress was voted for, chosen, and elected in the second congressional district of the State of Rhode Island, of which said town of Coventry, from, and during all of said time, formed a part, a large number of male citizens of the United States of America, who were qualified to vote for said Representative in Congress, at said election, to wit, William Harney, John G. Potter, Jeffrey Beauchaine, William T. Pierce, Amede Charpentier, Robert L. Congdon (alias Big Bob), Samuel Mortimer, Henry J. LeClair, and Herman Yorke (alias Jake Yorke), and with divers other persons to the grand jurors unknown.

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, fraudulently, and feloniously conspire, combine, confederate, and agree together with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William Bigelow (alias Cy. Bigelow), and

with divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the law of the United States, to wit, upon article 1, section 2, of the Constitution of the United States, which reads as follows:

8 "The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, fraudulently, and feloniously conspire, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and with divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the laws of the State of Rhode Island made and provided for the control and protection of elections held within said State of Rhode Island, to wit, section 2 of chapter 123 of the General Laws of Rhode Island, 1909, which reads as follows:

"SEC. 2. The town councils of the several towns and the boards of commissioners, as hereinafter provided, may grant or refuse to grant licenses to such citizens resident within this State for the manufacture or sale of pure spirituous and intoxicating liquors within the limits of such town or city as they may deem proper: Provided, That the number of licenses granted, not including druggists' liquor licenses, shall not exceed, in the several cities and towns of the State, one for each five hundred inhabitants as determined by the last census taken under the authority of the United States or the State of Rhode Island. Whenever any license for the sale of spirituous or intoxicating liquors shall be granted, the same shall be granted to expire on the first day of December next succeeding the granting of the same, unless revoked, as is hereinafter provided, and such citizens resident may obtain at any time, in the discretion of the persons authorized to grant licenses, a license to expire on the first day of December next succeeding the granting of the same, and pay therefor a price which shall be in proportion to the length of time which the said license so granted shall continue in force bears to the price of a license for a year; but no license granted under the provisions of this chapter shall authorize any person to sell any spirituous and

9 intoxicating liquors on Sunday, or on any election day, or on Labor Day, or on Christmas Day, except in licensed taverns when served with food to guests, or to any woman, except as hereinafter provided, or to sell or deliver, or to suffer to be sold or delivered, to any minor, either for his own use, the use of his parents, or of any other person, or to sell to any intoxicated person or to any person of notoriously intemperate habits, or to sell or furnish intoxicating liquors to any person on a pass-book or order on a store, or to receive from any person any good, wares, merchandise, or provisions in exchange for liquors, or to allow any minor or woman to drink any intoxicating liquors upon the premises, except in licensed taverns

or in licensed victualing houses, or to allow any minor or woman to sell or serve intoxicating liquors except in licensed taverns or in licensed victualing houses. The word 'tavern' as used in this chapter shall be construed to mean houses where the principal business is the furnishing of food and sleeping accommodations. The word 'victualing house' as used in this chapter shall be construed to mean houses or places where the principal business is the furnishing of food. Before granting a license to any person under the provisions of this chapter, said council or board shall give notice by advertisement for at least two weeks in some newspaper published in the city or town where the applicant proposes to carry on business, or if there be no newspaper published in said city or town, then in some newspaper published in the county in which such town is located, of the name of the applicant for said license, and the particular location for which the license is requested; and shall give opportunity for remonstrants to be heard before them as to the granting thereof, and no license shall be granted under this chapter to authorize the sale of any such liquors at any building or place where the owners of the greater part of the land within two hundred feet of such building or place shall file with the board having jurisdiction to grant licenses their objection to the granting of such license; nor shall any license be granted for the sale of such liquors in any building or place, except taverns that were licensed on the twenty-second day of May, nineteen hundred eight, within two hundred feet, measured by any public traveled way, of the premises of any public or parochial school. Before any license shall be issued under the provisions of this chapter, the person applying therefor shall give bond to the city or town treasurer in the penal sum of one thousand dollars, with at least two sureties satisfactory to said council or board, which sureties shall be residents of this State, or a surety company authorized to do business in this State, as surety, which bond shall be conditioned that the person licensed will not violate or suffer to be violated on any premises under his control any of the provisions of this chapter or of chapters one hundred eight or three hundred forty-seven, and for the payment of all costs and damages incurred by any violation of either of said chapters, and he shall also pay for such license to the town or city treasurer the sum hereinafter named, three-fourths thereof for the use of such town or city, and one-fourth to be paid over by the town or city treasurer to the general treasurer for the use of the State."

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the laws of the State of Rhode Island made and provided for the control and protection of elections held within said

State of Rhode Island, to wit, section 3 of chapter 20 of the General Laws of Rhode Island, 1909, which reads as follows:

"SEC. 3. Every person who shall directly or indirectly give or offer or agree to give to any elector or to any person for the benefit of any elector any sum of money or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote at any election in this State or by way of reward for having voted or withheld his vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing such elector to vote or withhold his vote for or against any candidate or candidates or proposition pending at such election, shall be punished by a fine of not less than five hundred dollars nor more than one thousand
11 dollars, or by imprisonment of not less than six months nor more than two years, or by both such fine and imprisonment in the discretion of the court, and no person after conviction of such offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by any witness testifying upon the trial of any charge of bribery shall be used against the person giving such evidence."

And at said time and place the said defendants, as part of said conspiracy, did wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and with divers other persons to the grand jurors unknown, to defraud the United States by perverting and obstructing the due administration of said laws, and each of said laws, and did cause, bring about, and assist in the maladministration of said laws, and did fraudulently and corruptly administer, enforce, and cause and procure the fraudulent and corrupt administering and enforcing of said laws and each of said laws on a day on which an election for Representative in Congress was held in said State of Rhode Island, to wit, the third day of November, 1914, and for a long period prior thereto.

And at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, said defendants did unlawfully, knowingly, wilfully, wrongfully, and feloniously conspire, combine, confederate, and agree together, and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States of America by obtaining from the governor of the State of Rhode Island a certificate of election, sealed with the seal of the State of Rhode Island, and attested by the Secretary of
12 the State of Rhode Island, certifying that a person whose name is to the grand jurors unknown, whom they, said defendants, intended to elect illegally, corruptly, fraudulently, and contrary to the laws of the State of Rhode Island and the Constitution and laws of the United States of America, was regularly and legally elected Representative in Congress from the second congressional

district of the State of Rhode Island, at said election held on, to wit, the third day of November, A. D. 1914, in accordance with the laws of the State of Rhode Island, and in accordance with the Constitution and laws of the United States of America and by having said person present said certificate of election to the House of Representatives of the United States of America and to the clerk of the last preceding House of Representatives of the United States of America before the meeting of the Sixty-fourth Congress in order that said person should have his name placed on the roll of Representatives elect.

And at the said time and place and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said defendants did unlawfully, knowingly wilfully, wrongfully, and feloniously conspire, combine, confederate, and agree together, and with the said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr), and William H. Bigelow (alias Cy. Bigelow), to defraud the United States of America, by foisting upon the said United States of America and upon the House of Representatives thereof, as a duly elected Member of said House of Representatives of the United States of America, a certain person whose name is to the grand jurors unknown, whom they intended to elect illegally and contrary to the constitution and laws of the State of Rhode Island, and contrary to the Constitution and laws of the United States of America, as a Member of the House of Representatives of

the United States of America, and to secure for such person
13 not duly elected or chosen, the privileges, immunities, and emoluments of a member of the House of Representatives of the United States of America, including the annual statutory salary of seventy-five hundred (\$7,500) dollars per year, provided by the said United States of America, as compensation for a duly elected Member of the House of Representatives of the United States of America.

That the constitution of the State of Rhode Island, to wit, article II, section 1 and section 2, fixes the qualifications for electors of the most numerous branch of the State legislature as follows:

"SECTION 1. Every male citizen of the United States, of the age of twenty-one years, who has had his residence and home in this State for one year, and in the town or city in which he may claim a right to vote, six months next preceding the time of voting, and who is really and truly possessed in his own right of real estate in such town or city of the value of one hundred and thirty-four dollars, over and above all incumbrances, or which shall rent for seven dollars per annum over and above any rent reserved or the interest of any incumbrances thereon, being an estate in fee-simple, fee-tail, for the life of any person, or an estate in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate, if by deed, shall have been recorded at least ninety days, shall thereafter have a right to vote in the election of all civil officers and on all questions in all legal town or ward meetings so long as he

continues so qualified. And if any person hereinbefore described shall own any such estate within this State out of the town or city in which he resides, he shall have a right to vote in the election of all general officers and members of the general assembly in the town or city in which he shall have had his residence and home for the term of six months next preceding the election, upon producing a certificate from the clerk of the town or city in which his estate lies, bearing date within ten days of the time of his voting, setting forth that such person has a sufficient estate therein to qualify him as a voter; and that the deed, if any, has been recorded ninety days.

14 "SECTION 2. (Section 2 annulled by Article VII of the amendments, April, 1888, and the following substituted):

"Every male citizen of the United States of the age of twenty-one years, who has had his residence and home in this State for two years, and in the town or city in which he may offer to vote six months next preceding the time of his voting, and whose name shall be registered in the town or city where he resides on or before the last day of June (see Article XI, section eleven of amendments) in the year next preceding the time of his voting, shall have a right to vote in the election of all civil officers and on all questions in all legally organized town or ward meetings: Provided, that no person shall at any time be allowed to vote in the election of the city council of any city, or upon any proposition to impose a tax or for the expenditure of money in any town or city, unless he shall within the year next preceding have paid a tax assessed upon his property therein, valued at least at one hundred and thirty-four dollars," which said provision is now and has been in full force and effect continuously since April, 1888.

That the Legislature of the State of Rhode Island fixes the qualification for electors of the most numerous branch of the State Legislature by chapter six, section 1, of the General Laws, 1909, which reads as follows:

"SECTION 1. The two following classes of persons have by the constitution, the first as registered and the second as unregistered voters, a right to vote in the election of all civil officers and on all questions in all legally organized town, ward, or district meetings:

"First. Every male citizen of the United States of the age of twenty-one years who has had his residence and home in this State for two years, and in the town or city in which he may offer to vote six months next preceding the time of his voting, and whose name shall be registered in the town or city where he resides on or before the last day of June next preceding the time of his voting: Provided that no person shall at any time be allowed to vote in the election of the city council of any city, or upon any proposition to impose a tax or for the expenditure of money in any town or city, unless he shall within the year next preceding have paid a tax assessed
15 upon his property therein valued at least one hundred and thirty-four dollars.

"Second. Every male citizen of the United States of the age of twenty-one years who has had his residence and home in this State for one year, and in the town or city in which he may claim a right to vote six months next preceding the time of voting, and who is really and truly possessed in his own right of real estate in such town or city of the value of one hundred and thirty-four dollars over and above all incumbrances, or which shall rent for seven dollars per annum over and above any rent reserved or the interest of any incumbrances thereon, being an estate in fee simple, fee tail, for the life of any person, or an estate in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate, if by deed, shall have been recorded at least ninety days," which said provision is now and has been in full force and effect continuously since January 23, 1901.

That section 3 of chapter 20 of the General Laws of Rhode Island, 1909, hereinbefore set out and referred to which is now and has been in full force and effect continuously since April 5, 1907, provides and makes it unlawful for any person to directly or indirectly give or offer or agree to give to any elector, or to any person for the benefit of any elector, any sum of money, or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote.

16 That during all said time said Lewell Whitman was deputy sheriff of the town of Coventry, county of Kent, in the State of Rhode Island, and said Mathew T. Gradwell was liquor officer, charged with the enforcement of the liquor law in said town of Coventry, in said county of Kent.

And it was the intention of the said defendants then and there to defraud the United States of America by depriving it of its lawful right to a fair and clean election, on, to wit, November 3rd, 1914, at which time a Representative in Congress of the United States of America was to be, and, in fact, was voted for, chosen, and elected in the second congressional district of the State of Rhode Island, of which said town of Coventry from and during all of said time formed a part, and it was the further intention of the said defendants to obstruct, impair, corrupt, and debauch the election held in the town of Coventry, in the county of Kent, in the State of Rhode Island, on, to wit, the third day of November, A. D. 1914, and so deprive the United States of America of its lawful right to have a Representative in Congress, who was to be voted for at said election, elected fairly and in accordance with law.

17

Overt acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same said several defendants at the several times in that behalf hereinafter mentioned at Coventry, aforesaid, unlaw-

fully did do the several acts following mentioned in connection with their several names, and the said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy Bigelow), conspirators as aforesaid, unlawfully did do the several acts following mentioned in connection with their names, to wit:

(1) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, A. D. 1914, gave and delivered to Anthony Lambert, of said Washington, the sum of one hundred and fifty dollars (\$150.00), to be used for the payment of voters of the town of Coventry on election day, November 3rd, 1914.

(2) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told, instructed, and directed Anthony Lambert to use the sum of one hundred and fifty dollars (\$150.00) to pay voters of the town of Coventry at the election on November 3rd, 1914.

(3) That said Lewell Whitman, Charles Keach, James Rathbun, Jesse Carr, and Calvin E. Hopkins, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, met together and talked over the giving of brass checks to voters and electors of the town of Coventry on election day, November 3rd, 1914.

18 (4) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Calvin E. Hopkins (alias Ed. Hopkins) a certain number of brass checks, to wit, seventy-five; said brass checks to be given to voters in said Coventry on election day, November 3rd, 1914.

(5) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, told said Calvin E. Hopkins (alias Ed. Hopkins) that he (said Whitman) would redeem certain brass checks given to voters in Coventry on election day, November 3rd, 1914, by paying said voters a certain sum of money for each brass check some time after election.

(6) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Charles Keach a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman, said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(7) That said Calvin E. Hopkins (alias Ed. Hopkins), on, to wit, at Coventry, November 3rd, 1914, gave and delivered to George Kresgie a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election day by said Whitman paying certain sums of money for them.

(8) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Earl

Dodge a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

19 (9) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, cn, to wit, November 3rd, 1914, gave and delivered to Samuel Franklin, jr. (alias Sam Franklin, jr.), a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(10) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to John G. Cook a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(11) That said Albert Henry Mathewson, at Coventry, on said election day, being then and there a supervisor at said election, appointed for and acting in the voting district located at Coventry Centre in said town of Coventry, gave a certain signal, to wit, nodded his head, to indicate to said Calvin E. Hopkins (alias Ed. Hopkins) and certain other defendants that certain voters had "voted right."

(12) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, gave and delivered to John G. Potter a certain brass check, said John G. Potter being then and there a qualified voter in the town of Coventry, and said brass check being given and delivered to said Potter after he had voted in said Coventry on election day, November 3rd, 1914.

(13) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, some time after election day, November 3rd, 1914, paid to John G. Potter the sum of five dollars for a certain
20 brass check, which said brass check had been given to said John G. Potter by said Lewell Whitman on election day, November 3rd, 1914, after he (said Potter) had voted.

(14) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, said to Everett P. Harrington, "There is five in it, if we win, and three if we lose," said Harrington being then and there a qualified elector and voter in the town of Coventry, and said statement was made by said Whitman before said Harrington voted on said 3rd day of November, 1914.

(15) That one of said defendants, at Coventry, on election day, November 3rd, 1914, gave and delivered to Everett P. Harrington, after said Harrington had voted, on said date, a certain brass check, to wit, a check marked with three rings or links.

(16) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that a certain brass check was good for his (Harrington's) money.

(17) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that he (said Harrington) would not get his money that day, but he said Whitman would see that he (Harrington) would get it.

(18) That said Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told William Harney there was five dollars for his vote if he cast his vote for the Republicans; said William Harney being then and there a qualified elector and voter in said town of Coventry.

(19) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to William Harney a certain brass check, to wit, a brass check marked with three rings or links.

21 (20) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a few days after election day, 1914, told William Harney that he, said Samuel Franklin, jr. (alias Sam Franklin, jr.), would pay said Harney the money for a certain brass check given to said Harney by said Franklin on election day, November 3rd, 1914.

(21) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date a few weeks after election day, November 3rd, 1914, the particular date being to the grand jurors unknown, received from William Harney a certain brass check, which he (said Franklin, jr.), had given to said Harney on election day, November 3rd, 1914.

(22) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, paid to William Harney the sum of five dollars (\$5.00) for a certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(23) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told Robert L. Congdon "to make it a straight vote;" said Robert L. Congdon being then and there a qualified elector in the town of Coventry.

(24) That Samuel Franklin, jr (alias Sam Franklin, jr.), at Coventry, on said election day, November 3rd, 1914, gave and delivered to Robert L. Congdon a certain brass check, to wit, a brass check with three rings or links marked thereon; said brass check being given by said Franklin, jr., to said Congdon after said Congdon had voted on election day, November 3rd, 1914.

(25) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for, and received from Robert L. Congdon, a certain brass check, to wit,

a brass check marked with three rings or links, which he (said Congdon) had received from said Franklin, jr., on election day, November 3rd, 1914.

(26) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, paid to Robert L. Congdon, the sum of five dollars (\$5.00) for said certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(27) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Arthur Battey a certain brass check, said Arthur Battey being then and there a qualified voter and elector in said town of Coventry, on said election day, November 3rd, 1914.

(28) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Earl C. Green a certain brass check, said Earl C. Green being then and there a qualified elector and voter in the town of Coventry.

(29) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Henry J. Le Clair a certain brass check, saying to said Le Clair, "That is good for \$3.00 if we lose and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(30) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Fred McClure a certain brass check, saying to said McClure, "That is good for \$3.00 if we lose and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(31) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, a certain date to the grand jurors unknown, a few weeks after election day, November 3rd, 1914, told Henry Le Clair to go down to Lewell Whitman and get his (Le Clair's) money for the certain brass check given to said Le Clair by said Hopkins on election day, November 3rd, 1914, saying to said Le Clair, "There is not any hurry."

(32) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, said to Samuel Mortimer, "Be sure and vote right," said Samuel Mortimer being then and there a qualified elector in the town of Coventry.

(33) That Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to said Samuel Mortimer a certain brass check, to wit, a brass check marked with three rings or links, said brass check being concealed under a cigarette box, which said Franklin, jr., handed to said Mortimer, saying, "Have a cigarette."

(34) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain day after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for and received from said Samuel Mortimer a certain brass check,

which said Mortimer had received from said Franklin, jr., on election day, November 3rd, 1914, said Mortimer then and there saying to said Franklin, "If I give you this, that is all there is to it," and said Franklin replying, "Yes, I will see you later."

(35) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said certain date being to the grand jurors unknown, paid to said Samuel Mortimer the sum of five dollars for the certain brass check, which he (said Mortimer) had received from said Franklin on election day, November 3rd, 1914.

(36) That said defendants, at Coventry, on election day, November, 1914, gave, and caused to be given, to Herman Yorke 24 (alias Jake York) a certain brass check, to wit, a brass check marked with three rings, said defendants saying and causing to be said to said Yorke, "Did you do it right?" and said Yorke replying, "Yes"; said Herman Yorke (alias Jake Yorke) being then and there a qualified elector and voter in the town of Coventry at said election, November 3rd, 1914.

(37) That said George Warner, at Coventry, on, to wit, a few days before election day, November 3rd, 1914, in a certain conversation with William T. Pierce, then and there a qualified elector and voter in the town of Coventry, said to said Pierce, "There is going to be a couple of dollars in it for you"; and Pierce replied, "No; I won't vote for that"; then Warner said, "I will give you five. I want you to stay with us." "I will talk with Gradwell. Matt will give you five dollars."

(38) That said George Warner, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told William T. Pierce that he (said Warner) could only pay him four dollars.

(39) That said George Warner, at Coventry, on, to wit, a certain date, a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of four dollars.

(40) That said Mathew T. Gradwell, at Coventry, on, to wit, a certain date, a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of two dollars.

(41) That said Samuel Franklin (alias Sam Franklin), at Coventry, on, to wit, election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), a certain number of brass checks, to wit, twenty-five.

(42) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on said election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), certain brass checks, to wit, twenty-five.

(43) That said William H. Bigelow, at Coventry, on election 25 day, November 3rd, 1914, said to Jeffery Bauchaine, "If you will vote for my party I will give you two dollars."

(44) That said William H. Bigelow (alias Cy. Bigelow), at Coventry, on, to wit, a certain date a few weeks after election day, No-

vember 3rd, 1914, paid to said Jeffery Bauchaine the sum of two dollars, promised by said Bigelow on election day, November 3rd, 1914.

(45) That said Emanuel Carpenter, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told Amede Charpentier that he (said Charpentier) would pay Charpentier two dollars if Charpentier would vote for "Carpenter's side."

(46) That said Emanuel Carpenter, at Coventry, on, to wit, a certain date subsequent to said election day, November 3rd, 1914, paid to said Amede Charpentier the sum of two dollars.

(47) That said Ellery Hudson, Mathew T. Gradwell, Lewell Whitman, and other defendants, at Coventry, on, to wit, some date prior to said election day, November 3rd, 1914, arranged together the spending and use of money to bribe and corrupt voters of the town of Coventry at said election held November 3rd, 1914, by the use of brass checks and in other ways.

26 And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, at the time and place and in manner and form aforesaid, unlawfully, wilfully, fraudulently, and feloniously did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid; and said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) (said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) not, however, being herein indicted), each did do the several acts aforesaid, to effect the object of said conspiracy, and in furtherance of and in execution of and for the purpose of carrying out the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

HARVEY A. BAKER,
United States Attorney.

27

Second count.

Of the May term, in the year 1915.

DISTRICT OF RHODE ISLAND, ss:

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the year 1914, and particularly on the third day of November, 1914, Mathew T. Gradwell, Emanuel Car-

penter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, and Earl Dodge, hereinafter referred to as defendants, each late of the town of Coventry, in the county of Kent, in said district of Rhode Island, and Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy Bigelow), said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), by reason of the fact that they have testified before said grand jurors concerning the matters in this indictment charged, not being here indicted, at said town of Coventry, in said district of Rhode Island, did unlawfully, knowingly, wilfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with divers other persons to the said grand jurors unknown, to defraud the United States by corrupting and debauching the general election held in the town of Coventry, in the county of Kent, and the State of Rhode Island, on, to wit, the third day of November, 1914, at which said election a candidate for Representative in Congress was voted for, chosen, and elected in said second congressional district

28 of Rhode Island, which said town of Coventry on November 3rd, 1914, was and still is a part of the second congressional district of the State of Rhode Island, in the manner following—that is to say, said defendants did devise a scheme to bribe, influence, corrupt, and debauch the voters of the town of Coventry, on, to wit, the third day of November, 1914, at which time and place a general election was held for the election of State officers and for a Representative in Congress, which said scheme was as follows: The said defendants and certain persons who were to act under the direction and control of said defendants were to give to voters and electors in the town of Coventry on said election day, to wit, the third day of November, 1914, who voted as the defendants directed and influenced said electors and voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control, brass checks with certain stamps thereon, which said brass checks were given to said voters and electors by said defendants and persons acting under their direction and control in payment for the said voters and electors having voted as said defendants and the persons acting under their direction and control directed and influenced said voters to vote and for voting in a manner satisfactory to the said defendants and the persons acting under their direction and control; and the said defendants were to pay on and redeem said brass checks given to voters as aforesaid at some time after said election day by giving and paying to said voters who were given checks as aforesaid on election day, to wit, the third day of November, 1914, as aforesaid, for said checks a sum of money, to wit, five dollars, which said sum of money was to be given and paid to

29 said voters and electors in payment for having voted as directed by said defendants and the persons who acted under their direction and control and for having voted in a manner satisfactory to said defendants and the persons acting under their control, and said defendants and certain persons acting under their control and direction were to pay to voters and electors for voting as the said defendants and persons acting under the direction and control of said defendants directed said voters to vote, and in a manner satisfactory to said defendants a certain sum of money, to wit, five dollars, which said money was to be paid to said voters for having voted as directed by said defendants and the persons acting under their direction and control and for having voted in a manner satisfactory to said defendants and the persons acting under their direction and control.

And at said time and place, and as a part of said conspiracy, said defendants did unlawfully, knowingly, wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), William H. Bigelow (alias Cy. Bigelow), and divers other persons to the grand jurors unknown, to defraud the United States of America by committing a wilful fraud upon the laws of the State of Rhode Island made and provided for the control and protection of elections held within said State of Rhode Island, to wit, section 3 of chapter 20 of the General Laws of Rhode Island, which reads as follows:

30 "SEC. 3. Every person who shall directly or indirectly give or offer or agree to give to any elector, or to any person for the benefit of any elector, any sum of money or other valuable consideration for the purpose of inducing such elector to give in or withhold his vote at any election in this State, or by way of reward for having voted or withheld his vote, or who shall use any threat or employ any means of intimidation for the purpose of influencing such elector to vote or withhold his vote for or against any candidate or candidates or proposition pending at such election, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment of not less than six months nor more than two years, or by both such fine and imprisonment in the discretion of the court, and no person after conviction of such offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by any witness testifying upon the trial of any charge of bribery shall be used against the person giving such evidence."

And at said time and place the said defendants, as part of said conspiracy, did wilfully, wrongfully, fraudulently, and feloniously conspire, combine, confederate, and agree together and with Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow) to

defraud the United States by perverting and obstructing the due administration of said law, and did cause, bring about, and assist in the maladministration of said law, and did fraudulently, corruptly administer, enforce, and cause and procure the fraudulent and corrupt administration and enforcing of said law on a day on which an election for a Representative in Congress was held in the State of Rhode Island, to wit, the third day of November, 1914.

And it was the intention of the said defendants then and there to defraud the United States of America by depriving it of its lawful right to a fair and clean election in said town of Coventry on, to wit, November 3rd, 1914, at which time a representative in Congress of the United States of America was to be, and in fact was, voted for, chosen, and elected in the second congressional district of the State of Rhode Island, of which said town of Coventry from and during all of said time formed a part, and it was the further intention of the said defendants to obstruct, impair, corrupt, and debauch the election in the town of Coventry, in the county of Kent, in the State of Rhode Island, on, to wit, the third day of November, A. D.

1914, and so deprive the United States of America of its
31 lawful right to have a Representative in Congress who was
to be voted for at said election elected fairly and in accordance with law.

32

Overt acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object of the same, said several defendants at the several times in that behalf hereinafter mentioned, at Coventry aforesaid, unlawfully did do the several acts following, mentioned in connection with their several names, and the said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), conspirators as aforesaid, unlawfully did do the several acts following mentioned in connection with their names, to wit:

(1) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, A. D. 1914, gave and delivered to Anthony Lambert, of said Washington, the sum of one hundred and fifty dollars (\$150.00), to be used for the payment of voters of the town of Coventry on election day, November 3rd, 1914.

(2) That said Irving Hudson, at Washington, in the town of Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told, instructed, and directed Anthony Lambert to use the sum of one hundred and fifty dollars (\$150.00) to pay voters of the town of Coventry at the election on November 3rd, 1914.

(3) That said Lewell Whitman, Charles Keach, James Rathbun, Jesse Carr, and Calvin E. Hopkins, at Coventry, on, to wit, a few

days prior to election day, November 3rd, 1914, met together and talked over the giving of brass checks to voters and electors of the town of Coventry on election day, November 3rd, 1914.

33 (4) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Calvin E. Hopkins (alias Ed. Hopkins), a certain number of brass checks, to wit, seventy-five; said brass checks to be given to voters in said Coventry on election day, November 3rd, 1914.

(5) That said Lewell Whitman, at Coventry, on, to wit, November 3rd, 1914, told said Calvin E. Hopkins (alias Ed. Hopkins), that he, said Whitman, would redeem certain brass checks given to voters in Coventry on election day, November 3rd, 1914, by paying said voters a certain sum of money for each brass check some time after election.

(6) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Charles Keach a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(7) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to George Kresgie a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election day by said Whitman paying certain sums of money for them.

(8) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Earl Dodge a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

34 (9) That said Calvin E. Hopkins (alias Ed Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to Samuel Franklin, jr., a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(10) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, November 3rd, 1914, gave and delivered to John G. Cook a certain number of brass checks, to wit, ten, which said brass checks had been given to said Hopkins by Lewell Whitman; said brass checks to be given to voters in said town of Coventry on election day, November 3rd, 1914, and to be redeemed after election by said Whitman paying certain sums of money for them.

(11) That said Albert Henry Mathewson, at Coventry, on said election day, being then and there a supervisor at said election, appointed for and acting in the voting district located at Coventry Centre in said town of Coventry, gave a certain signal, to wit, nodded his head, to indicate to said Calvin E. Hopkins (alias Ed. Hopkins), and certain other defendants, that certain voters had "voted right."

(12) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, gave and delivered to John G. Potter a certain brass check, said John G. Potter being then and there a qualified voter in the town of Coventry, and said brass check being given and delivered to said Potter after he had voted in said Coventry on election day, November 3rd, 1914.

(13) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, some time after election day, November 3rd, 1914, paid to John G. Potter the sum of five dollars for a certain
35 brass check which said brass check had been given to said John G. Potter by said Lewell Whitman on election day, November 3rd, 1914, after he, said potter, had voted.

(14) That said Lewell Whitman, at Coventry, on election day, November 3rd, 1914, said to Everett P. Harrington, "There is five in it if we win, and three if we lose," said Harrington being then and there a qualified elector and voter in the town of Coventry, and said statement was made by said Whitman before said Harrington voted on said 3rd day of November, 1914.

(15) That one of said defendants, at Coventry, on election day, November 3rd, 1914, gave and delivered to Everett P. Harrington, after said Harrington had voted, on said date, a certain brass check, to wit, a check marked with three rings or links.

(16) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that a certain brass check was good for his, Harrington's money.

(17) That said Lewell Whitman, at Coventry, on said election day, November 3rd, 1914, told Everett P. Harrington that he, said Harrington, would not get his money that day, but he, said Whitman, would see that he, Harrington, would get it.

(18) That said Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told William Harney there was five dollars for his vote if he cast his vote for the Republicans, said William Harney being then and there a qualified elector and voter in said town of Coventry.

(19) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to William Harney a certain brass check, to wit, a brass check marked
with three rings or links.

36 (20) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a few days after election day, 1914, told William Harney that he (said Samuel Franklin, jr.) (alias Sam Franklin, jr.), would pay said Harney the money for a

certain brass check given to said Harney by said Franklin on election day, November 3rd, 1914.

(21) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date a few weeks after election day, November 3rd, 1914, the particular date being to the grand jurors unknown, received from William Harney a certain brass check, which he (said Franklin, jr.) had given to said Harney on election day, November 3rd, 1914.

(22) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, paid to William Harney the sum of five dollars (\$5.00) for a certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(23) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, told Robert L. Congdon "to make it a straight vote," said Robert L. Congdon being then and there a qualified elector in the town of Coventry.

(24) That Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on said election day, November 3rd, 1914, gave and delivered to Robert L. Congdon a certain brass check, to wit, a brass check with three rings or links marked thereon, said brass check being given by said Franklin, jr., to said Congdon after said Congdon had voted on election day, November 3rd, 1914.

(25) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for and received from Robert L. Congdon a certain brass check, to wit, a brass check marked with three rings or links, which he (said Congdon) had received from said Franklin, jr., on election day, November 3rd, 1914.

(26) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, paid to Robert L. Congdon the sum of five dollars (\$5.00) for said certain brass check, which said Franklin, jr., had given to said Harney on election day, November 3rd, 1914.

(27) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Arthur Battey a certain brass check; said Arthur Battey being then and there a qualified voter and elector in said town of Coventry, on said election day, November 3rd, 1914.

(28) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Earl C. Green a certain brass check, said Earl C. Green being then and there a qualified elector and voter in the town of Coventry.

(29) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Henry J. Le Clair a certain brass check, saying to said Le Clair,

"That is good for \$3.00 if we lose, and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(30) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on election day, November 3rd, 1914, gave and delivered to Fred McClure a certain brass check saying to said McClure, "That is good for \$3.00 if we lose and \$5.00 if we win." "Go to Lou Whitman after election day and get your money."

(31) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on, to wit, a certain date to the grand jurors unknown, a few weeks after election day, November 3rd, 1914, told Henry Le Clair to go down to Lewell Whitman and get his (Le Clair's) money for the certain brass check given to said Le Clair, by said Hopkins
38 on election day, November 3rd, 1914, saying to said Le Clair, "There is not any hurry."

(32) That Samuel Franklin (alias Sam Franklin), at Coventry, on election day, November 3rd, 1914, said to Samuel Mortimer, "Be sure and vote and right," said Samuel Mortimer being then and there a qualified elector in the town of Coventry.

(33) That Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on election day, November 3rd, 1914, gave and delivered to said Samuel Mortimer a certain brass check, to wit, a brass check marked with three rings or links, said brass check being concealed under a cigarette box which said Franklin, jr., handed to said Mortimer, saying, "Have a cigarette."

(34) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain day after election day, November 3rd, 1914, said date being to the grand jurors unknown, asked for and received from said Samuel Mortimer a certain brass check which said Mortimer had received from said Franklin, jr., on election day, November 3rd, 1914, said Mortimer then and there saying to said Franklin, "If I give you this, that is all there is to it," and said Franklin replying, "Yes; I will see you later."

(35) That said Samuel Franklin, jr. (alias Sam Franklin, jr.), at Coventry, on, to wit, a certain date after election day, November 3rd, 1914, said certain date being to the grand jurors unknown, paid to said Samuel Mortimer the sum of five dollars for the certain brass check which he (said Mortimer) had received from said Franklin on election day, November 3rd, 1914.

(36) That said defendants, at Coventry, on election day, November, 1914, gave and caused to be given to Herman Yorke (alias
39 Jake Yorke) a certain brass check, to wit, a brass check marked with three rings, said defendants saying and causing to be said to said Yorke, "Did you do it right?" and said Yorke replying "Yes"; said Herman Yorke (alias Jake Yorke) being then and there a qualified elector and voter in the town of Coventry at said election, November 3rd, 1914.

(37) That said George Warner, at Coventry, on, to wit, a few days before election day, November 3rd, 1914, in a certain conversation with William T. Pierce, then and there a qualified elector and

voter in the town of Coventry, said to said Pierce, "There is going to be a couple of dollars in it for you," and Pierce replied, "No; I won't vote for that"; then Warner said, "I will give you five." "I want you to stay with us." "I will talk with Gradwell; Matt will give you five dollars."

(38) That said George Warner, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told William T. Pierce that he (said Warner) could only pay him four dollars.

(39) That said George Warner, at Coventry, on, to wit, a certain date a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of four dollars.

(40) That said Mathew T. Gradwell, at Coventry, on, to wit, a certain date a few days after election day, November 3rd, 1914, paid to said William T. Pierce the sum of two dollars.

(41) That said Samuel Franklin (alias Sam Franklin), at Coventry, on, to wit, election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), a certain number of brass checks, to wit, twenty-five.

(42) That said Calvin E. Hopkins (alias Ed. Hopkins), at Coventry, on said election day, November 3rd, 1914, gave to Samuel Franklin, jr. (alias Sam Franklin, jr.), certain brass checks, to wit, twenty-five.

(43) That said William H. Bigelow, at Coventry, on election day, November 3rd, 1914, said to Jeffery Bauchaine, "If you will vote for my party, I will give you two dollars."

(44) That said William H. Bigelow (alias Cy. Bigelow), at Coventry, on, to wit, a certain date a few weeks after election day, November 3rd, 1914, paid to said Jeffery Bauchaine the sum of two dollars, promised by said Bigelow on election day, November 3rd, 1914.

(45) That said Emanuel Carpenter, at Coventry, on, to wit, a few days prior to election day, November 3rd, 1914, told Amede Charpentier that he (said Charpentier) would pay Charpentier two dollars, if Charpentier would vote for "Carpenter's side."

(46) That said Emanuel Carpenter at Coventry, on, to wit, a certain date subsequent to said election day, November 3rd, 1914, paid to said Amede Charpentier the sum of two dollars.

(47) That said Ellery Hudson, Mathew T. Gradwell, Lewell Whitman, and other defendants, at Coventry, on, to wit, some date prior to said election day, November 3rd, 1914, arranged together the spending and use of money to bribe and corrupt voters of the town of Coventry at said election held November 3rd, 1914, by the use of brass checks and in other ways.

41 And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun (alias Jim Rathbun), Lewell Whitman (alias Lou Whitman), Samuel Franklin (alias Sam Franklin), Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, at the time and place and in manner and form aforesaid,

unlawfully, wilfully, fraudulently, and feloniously did conspire, confederate, and agree together to defraud the United States, and each did do the several acts aforesaid; and said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), (said Calvin E. Hopkins (alias Ed. Hopkins), Samuel Franklin, jr. (alias Sam Franklin, jr.), and William H. Bigelow (alias Cy. Bigelow), not, however, being herein indicted), each did do the several acts aforesaid to effect the object of said conspiracy, and in furtherance of and in execution of, and for the purpose of carrying out the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

HARVEY A. BAKER,
United States Attorney.

A true bill.

A. H. G. TEMPLE, *Foreman.*

42 Thereafter, on, to wit, November 24, 1915, each of the
14 defendants filed demurrers, which are identical; and in
accordance with a stipulation signed by counsel of all the parties
the demurrer of Mathew T. Gradwell is included in this transcript,
and the others are omitted.

In the District Court of the United States for the District of Rhode
Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.
Violation of sec-
tion 37, Crimi-
nal Code.

Stipulation reducing record. (Filed September 11, 1916.)

In the above-entitled cause it is hereby stipulated by and between Harvey A. Baker, United States attorney for the District of Rhode Island, and Walter L. Barney, attorney for Mathew T. Gradwell, James Rathbun, George Warner, and Albert Henry Mathewson; Alexander L. Churchill, attorney for Ellery Hudson, Irving Hudson, and Earl Dodge; Charles A. Walsh, attorney for George Kresgie, Lewell Whitman, John Colvin, and Charles Keach; Wayne H. Whitman, attorney for Jesse Carr and Samuel Franklin; and James E. Dooley, attorney for Emanuel Carpenter, that the demurrers filed by the various defendants in said cause are identical in form and substance.

It is further stipulated that the clerk in making up the transcript of the record may omit therefrom the following papers and records, to wit, demurrers of Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Warner, Charles Keach, Earl Dodge.

It is also stipulated that this stipulation be made a part of the record on appeal.

HARVEY A. BAKER,
United States Attorney.

WALTER H. BARNEY,
*Attorney for Mathew T. Gradwell, James Rathbun,
George Warner and Albert Henry Mathewson.*

ALEXANDER L. CHURCHILL,
*Attorney for Ellery Hudson, Irving
Hudson, and Earl Dodge.*

CHARLES A. WALSH,
*Attorney for George Kresgie, Lewell Whit-
man, John Colvin, and Charles Keach.*

WAYNE H. WHITMAN,
Attorney for Jesse Carr and Samuel Franklin.

JAMES E. DOOLEY,
Attorney for Emanuel Carpenter.

44 District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA	} Indictment No. 114.
v.	
MATTHEW T. GRADWELL et al.	

Demurrer to indictment. (Filed Nov. 24, 1915.)

And now the said Matthew Gradwell, in said indictment called "Mathew T. Gradwell," one of the defendants, comes into court and, having heard said indictment read, says that the said indictment and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law and that he, the said defendant, is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said defendant prays judgment and that by the court he may be dismissed and discharged from said premises in said indictment specified.

To both counts.

And the said defendant herein shows to the court the following causes of demurrer to both of the counts in said indictment, and to each of them severally:

1. That each of said counts respectively fails to set forth any offense under the laws of the United States.

2. That each of said counts respectively fails to set forth any offense under the laws of the United States with such certainty that the defendant is thereby informed of the nature and cause of the accusation against him, as required by the provisions of Article VI of Amendments to the Constitution of the United States.

3. That, so far as appears from either of the counts of said indictment respectively, said defendant did not conspire to defraud the United States of any property or of any right of which the United States was possessed or which it might under the law enforce.

4. That it does not appear that the object of any supposed conspiracy, as set forth in either of the counts of said indictment respectively, was to defraud or deprive the United States of any right, matter, or thing to which it was by law entitled.

5. That, so far as appears by either of the counts of said indictment respectively, said defendant did not conspire to deprive the United States of any property or right, by deception and artifice, misrepresentation, or concealment of a material fact.

6. That the supposed offenses, and each of them, to commit which was the object of conspiracy on the part of the defendant as
45 set forth in each of the counts of said indictment respectively, are, and at the time of the supposed conspiracy and conspiracies in said counts respectively set forth were, offenses against the State of Rhode Island and not offenses against the United States.

7. That the allegations of said indictment, and of each of the counts thereof respectively, are so uncertain, vague, general, and indefinite that the defendant is not thereby sufficiently apprised as to the charge and charges therein and thereby intended to be made against him to enable him intelligently to plead to said indictment and said counts thereof respectively or properly to prepare his defense thereto.

8. That "corrupting and debauching" the general election, referred to in each of the counts of said indictment, in the manner respectively set forth in said counts, which in said counts respectively are charged as the means by which it was proposed to defraud the United States in accordance with the supposed conspiracy and conspiracies in said counts respectively set forth, do not constitute a fraud upon the United States.

9. That the phrase "fair and clean election," as used in said indictment and each of the counts thereof, has no certain or definite meaning established by law or fixed by known or common usage, and the charges of conspiring to defraud and of intending to deprive the United States of its right to a "fair and clean election," as in said counts respectively set forth, are so uncertain and ambiguous that the defendant is not apprised of the nature of said charges or able to intelligently prepare his defense thereto.

10. That the supposed right to a "fair and clean election," of which each of said counts respectively charges the said defendant with conspiring to deprive the United States, is not a right of which the United States was possessed or to which it was by law entitled or which it might under the law enforce.

11. That the allegations of each of said counts respectively fail to show that the said defendant conspired to do or to cause to be done any act or thing which would prevent a Representative in Congress from being elected in accordance with law at the election referred to in said counts respectively.

To first count.

And the said defendant herein shows to the court the following additional causes of demurrer to the first count of said indictment:

12. That said first count is multiple, in that it charges in said count more than one supposed conspiracy to defraud the United States.

13. That said first count is multiple in that in said one count it charges the said defendant with more than one supposed conspiracy to defraud the United States, to wit, with the supposed conspiracy to defraud the United States in the supposed manner set forth in the first paragraph of the said count, viz, by bribing electors at the election referred to in said count; with another supposed conspiracy to defraud the United States in the supposed manner set forth in the second paragraph of said count, viz, by distributing to voters and electors of the town of Coventry on the day of said election beer checks which were to be good for a bottle of beer to be furnished by the defendants with the intention and purpose set forth in said paragraph; with another supposed conspiracy with intent to defraud the United States in the supposed manner set forth in the third paragraph of said count, viz, by influencing and bribing and, having influenced and bribed, by voting and causing to be voted for a candidate for Representative in Congress at said election, a large number of persons who possessed the requisite qualifications
 46 for electors at said election; with another supposed conspiracy to defraud the United States, as set forth in the fourth paragraph of said count, viz, by committing a supposed wilful fraud upon article I, section 2, of the Constitution of the United States; with another supposed conspiracy to defraud the United States, as set forth in the fifth paragraph of said count, viz, by committing a supposed wilful fraud upon section 2 of chapter 123 of the General Laws of Rhode Island, 1909; with another supposed conspiracy to defraud the United States, as set forth in the sixth paragraph of said count, viz, by committing a supposed wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909; with another supposed conspiracy to defraud the United States, as set forth in the seventh paragraph of said count, viz, by perverting and obstructing the due administration of said laws and each of said laws; with another supposed conspiracy to defraud the United States, as set forth in the eighth paragraph of said count, viz, by obtaining from the governor of the State of Rhode Island a certificate of election, as set forth in said paragraph, and by having the

same presented to the House of Representatives of the United States as and for the purposes set forth in said paragraph; and with another supposed conspiracy to defraud the United States, as set forth in the ninth paragraph of said count, viz, by foisting upon the United States and the House of Representatives thereof an unknown person whom the defendants intended to elect illegally and contrary to law and to secure for him the privileges, immunities, and emoluments, including the salary of a duly elected Member of said House of Representatives of the United States; it not appearing in said count that said several supposed conspiracies were parts of a single conspiracy, or that they were entered into at the same time, or by the same persons.

14. That the said first count is double, in that in said one count it charges the defendants with a supposed conspiracy to defraud the United States, set forth in the first paragraph of said count, viz, by means of bribing electors at the election in said count referred to, and also with another supposed conspiracy to defraud the United States, set forth in the second paragraph of said count, viz, by distributing to voters and electors of the town of Coventry on the day of said election beer checks which were to be good for a bottle of beer to be furnished by the defendants with the intention and purpose set forth in said paragraph.

15. That the said first count is double, in that in said one count it charges the defendants with a supposed conspiracy to defraud the United States set forth in the first paragraph of said count, viz, by means of bribing electors at the election in said count referred to, and also with another supposed conspiracy to defraud the United States, set forth in the fifth paragraph of said count, viz, by committing a wilful fraud upon section 2 of chapter 123 of the General Laws of Rhode Island, 1909, the same being, as appears from said count, a section of said laws which provides for the granting of licenses for the manufacture or sale of pure spirituous and intoxicating liquors, and as to the terms of such licenses and the manner of granting the same and the conditions under which the same may be granted.

16. That, in addition to the divers uncertainties and ambiguities which are common to both of the counts of said indictment, and for which this defendant has demurred to each of said counts as aforesaid, said first count is so uncertain and ambiguous as to render it impossible for the defendant to understand the several charges therein made against him or to intelligently plead to the same or to properly prepare his defense thereto, in divers additional particulars, among others the following, viz:

(a) In that it does not appear in said count for what candidate or candidates it was agreed by the defendants that electors were
47 to vote or to have voted at the election mentioned in said count in order that the defendants should give or cause to be given to them brass checks with certain stamps thereon, as set forth in said count.

(b) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for giving or withholding or for having given or withheld a ballot in favor of or against any particular candidate for Representative in Congress or for any candidate whatsoever for that office.

(c) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for voting or not voting or for having voted or not voted for any candidate at said election.

(d) In that it does not appear in said count how or in what manner the United States was to be defrauded by the distribution of "beer checks," or the furnishing of beer, as set forth in said count.

(e) In that it does not appear in said count how or in what manner said election was to be corrupted or debauched by the distribution of "beer checks," or the furnishing of beer as set forth in said count.

(f) In that it does not appear in said count how electors and voters in the town of Coventry were to be corrupted, bribed, and influenced by the furnishing of beer by the defendants, as charged in said count to have been the intent of the defendants.

(g) In that it does not appear in said count that the supposed intention on behalf of the defendants to corrupt, bribe, and influence electors and voters in the town of Coventry by the defendants furnishing beer as charged in said count, was to bribe or influence said electors and voters to vote for or withhold their vote from any candidate for Representative in Congress or any candidate or candidates at the election mentioned in said count.

(h) In that, so far as appears in said count, the supposed intention on behalf of said defendants to corrupt, bribe, and influence electors and voters in the town of Coventry by furnishing beer, as charged in said count, had nothing to do with the participation of said electors and voters, or any of them, in the election mentioned in said count.

(i) In that it does not appear in said count how the United States was to be deprived of its supposed right to a "fair and clean election" on the 3d day of November, 1914, by the defendants furnishing beer as charged in said count.

(j) In that it does not appear in said count how the supposed purpose and intention of the defendants depriving the United States of its supposed right to "a fair and clean election" was to be effected by the defendant furnishing beer to electors and voters in the town of Coventry as charged in said indictment.

(k) In that it does not appear in said count for what candidate for Representative in Congress at the election mentioned in said count, qualified voters, who were to have voted or to be voted for a candidate for Representative in Congress, as set forth in said count, were to be influenced or bribed to vote at said election, or that such voters, or any of them were to be influenced or bribed to vote for or against any particular candidate or candidates at said election or any candidate or candidates whatsoever thereat.

(l) In that it does not appear in said count what candidate for Representative in Congress at said election the male citizens, qualified

to vote for such Representative at said election, voted or were voted for or against at said election, or that said citizens were influenced or bribed to vote for or against any particular candidate or candidates at said election or any candidate or candidates whatsoever thereat.

48 (m) In that it does not appear in said count what candidate for Representative in Congress at said election said defendant conspired to influence or bribe electors to give in or withhold their ballots in favor of or against at said election.

(n) In that it does not appear in said count that said defendant conspired to influence or bribe electors at said election to give in or withhold their ballots in favor of or against any candidate for Representative in Congress thereat.

(o) In that it does not appear in said count what candidate for Representative in Congress at said election said defendants, or any thereof, influenced or bribed any elector to give in or withhold his ballot in favor of or against thereat.

(p) In that it does not appear in said count that the defendants, or any of them, influenced or bribed any elector to give in or withhold his ballot in favor of or against any candidate for Representative in Congress at said election.

(q) In that it does not appear in said count how or in what manner the United States was to be defrauded by the commission of a supposed wilful fraud upon Article I, section 2, of the Constitution of the United States, as charged in said count.

(r) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said Article I, section 2, of the Constitution of the United States, as charged in said count, or what such supposed wilful fraud was to be.

(s) In that it does not appear in said count how or in what manner the United States was to be defrauded by the commission of a supposed wilful fraud upon section 2 of chapter 123 of the General Laws of Rhode Island, 1909, as charged in said count.

(t) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said section 2 of chapter 123 of the General Laws of Rhode Island, 1909, as charged in said count, or what such supposed wilful fraud was to be.

(u) In that it does not appear in said count how or in what manner the United States was to be defrauded by the commission of a supposed wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count.

(v) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count, or what such supposed wilful fraud was to be.

(w) In that it does not appear in said count how or in what manner the United States was to be defrauded by perverting or obstructing the due administration of said laws as charged in said count.

(x) In that it does not appear in said count how or in what manner said laws, or any thereof, were to be perverted or obstructed, as charged in said count.

(y) In that it does not appear how, in what manner, or by what means the defendants, or any of them, did cause, bring about, or assist in the maladministration of said laws, or any thereof, or did fraudulently and corruptly administer, enforce, or cause or procure the fraudulent and corrupt administering and enforcing of said laws, or any thereof, on the day of said election, as charged in said indictment.

(z) In that it does not appear in said count what person or persons did cause, bring about, or assist in the maladministration of
49 said laws, or any thereof, or did fraudulently and corruptly administer, enforce, and cause and procure the fraudulent and corrupt administering and enforcing of said laws, or any thereof, on the day of said election or at any time prior thereto, as charged in said count.

(aa) In that it does not appear in said count how, in what manner, or by what means said defendants were to obtain from the governor of the State of Rhode Island a certificate of election, as charged in said count.

(bb) In that it does not appear in said count how, in what manner, or by what means the obtaining or presentation of a certificate of election such as is set forth in said count was to defraud the United States, as charged in said count.

(cc) In that it does not appear in said count how or in what manner the presentation of such certificate of election, as is set forth in said count, to the House of Representatives of the United States or to the clerk of the last preceding House of Representatives of the United States before the meeting of the Sixty-fourth Congress would cause the name of the unknown person, in said count referred to, to be placed on the roll of Representatives-elect, as set forth in said count.

(dd) In that it does not appear in said count how or in what manner or by what means the defendants purposed or intended to elect illegally and contrary to the constitution and laws of the State of Rhode Island and contrary to the Constitution and laws of the United States the unknown person mentioned in said count as a Member of the House of Representatives of the United States, as charged in said count.

(ee) In that it does not appear in said count how or in what manner or by what means said defendants agreed or purposed to foister upon the United States of America and upon the House of Representatives thereof as a duly elected Member of said House an unknown person, as charged in said count.

(ff) In that it does not appear in said count how, in what manner, or by what means said defendants agreed or purposed to procure for said unknown person the privileges, immunities, and emoluments of

a Member of the House of Representatives of the United States, as charged in said count.

(gg) In that the pertinency of the recital of the provisions of Article II, section 1 and section 2, of the constitution of the State of Rhode Island, as set forth in said count, does not appear in or by said count.

(hh) In that the pertinency of the recital of chapter 6, section 1, of the General Laws of Rhode Island, 1909, as set forth in said count, does not appear in or by said count.

(ii) In that the pertinency of the recitals of the force and effect of section 3 of chapter 20 of the General Laws of Rhode Island, 1909, and that said section is now and has been in full force continuously since April 5, 1907, as set forth in said count, does not appear in or by said count.

(jj) In that the pertinency of the recitals in said count that the defendant, Lewell Whitman, and the defendant, Matthew T. Gradwell, respectively, during all the time mentioned in said count, held certain supposed offices therein named, but which are not created by law or known thereto, does not appear in or from said count.

(kk) In that it does not appear in said count how or in what manner or by what means it was the intention of said defendant to deprive the United States of its supposed right to a fair and clean election in said town of Coventry on said November 3rd, A. D. 1914, as charged in said count.

50 (ll) In that it does not appear in said count how or in what manner it was the intention of the said defendant to obstruct, impair, corrupt, and debauch said election, as charged in said indictment.

(mm) In that it does not appear how or in what manner the supposed obstructing, impairing, corrupting, and debauching of said election, as set forth in said count, was to deprive the United States of its supposed lawful right to have a Representative in Congress, who was to be voted for at said election, elected in accordance with law.

(nn) In that it does not appear in said count how or in what manner it was intended by the defendant to prevent the lawful election of a Representative in Congress at said election.

(oo) In that the words "elected fairly," as set forth in said count, are uncertain and ambiguous and do not apprise the defendant with certainty of what is intended thereby.

(pp) In that it does not appear from said count what supposed right, other than to have a Representative in Congress lawfully elected, is asserted or intended to be asserted in said count by the use of the words "lawful right to have a Representative in Congress * * * * elected fairly and in accordance with law."

(qq) In that it does not appear in said count how or in what manner it was intended by the defendants, or any of them, to prevent the election "fairly and in accordance with law" of a Representative in Congress, as charged in said indictment.

17. That in addition to the divers uncertainties and ambiguities which are common to both of the counts of said indictment, and for which this defendant has demurred to each of said counts as aforesaid, and in addition to the divers other uncertainties and ambiguities in the charging portions of said first count, referred to in the next preceding cause of demurrer as above set forth, the said first count is further vague, uncertain, and ambiguous in its allegations of acts supposed to have been done by one or more of the parties to a supposed conspiracy, set forth in said count, to effect the object of such conspiracy, which supposed acts in said count are designated as "overt acts," the same, as set forth in said count, not appearing to have been done to effect the object of such conspiracy, and either not appearing to have any relevancy to such supposed conspiracy or being allegations of supposed facts, which severally, if proved, might tend, with further evidence, to show the commission of an act to effect the object of the supposed conspiracy, but which, of themselves and as stated in said count, do not constitute such an act or acts.

Among the aforesaid uncertainties and ambiguities are the following, viz:

(j) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(3)," "(4)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(41)," "(42)," and "(47)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; but, on the contrary, so far as said several supposed "overt acts" as therein alleged are relevant to the supposed offense charged in said count, the same, respectively, pertain to the supposed conspiracy itself, and do not constitute an act or acts to effect the object thereof.

(ij) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(11)," "(14)," "(38)," "(39)," "(40)," "(43)," "(44)," "(46)," and "(47)," was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count, and on the contrary each one of said supposed "overt acts," as in said count charged, so far as appears therein, is not relevant to the offense charged in said count.

51 (iij) No one of the several supposed "overt acts" set forth in said count and numbered respectively "(3)," "(4)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(12)," "(13)," "(15)," "(16)," "(19)," "(20)," "(21)," "(22)," "(24)," "(25)," "(26)," "(27)," "(28)," "(29)," "(30)," "(31)," "(33)," "(34)," "(35)," "(36)," "(41)," and "(42)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and in no one thereof, as set forth in said count, does it appear that the brass checks, therein respectively charged to have been given or delivered or directed to be given, were, or that any such brass check was proposed or directed to be given or had been given or offered to be given to bribe, influence, corrupt, or debauch any voter or elector or to induce or hire him to vote as directed or suggested by any per-

son or persons, or to the satisfaction of any person or persons, or to give in or withhold his vote for any candidate for Representative in Congress or for any candidate or candidates at the election referred to in said count, or because he had voted or was to vote at said election to the satisfaction of or as directed or suggested by any person or persons, or because he had given in or withheld or was to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates at such election.

(iv) No one of the several supposed "overt acts," set forth in said count and numbered respectively "(1)," "(2)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(13)," "(16)," "(17)," "(20)," "(22)," "(26)," "(29)," "(30)," "(31)," "(35)," "(37)," "(38)," "(39)," "(40)," "(43)," "(44)," "(45)," and "(46)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and, in no one thereof, as set forth in said count, does it appear that any money or sum of money, in the statements of said supposed "overt acts" respectively set forth, was or was to be given or had been given to any person, voter, or elector therein referred to, or to any person, voter, or elector to bribe, influence, corrupt, or debauch such person, voter, or elector or as a bribe or reward for voting or having voted at the election mentioned in said count as directed or suggested by any person or persons, or to the satisfaction of any person or persons, or to bribe, influence, or induce him to so vote thereat, or as a bribe or reward for having given in or withheld his ballot for any candidate for Representative in Congress or for any candidate or candidates at said election, or to bribe or induce him to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates thereat.

(v) No one of the several supposed "overt acts" set forth in said count and numbered respectively from "(11)" to "(40)," both numbers inclusive, and from "(43)" to "(46)," both numbers inclusive, was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and the allegations of said supposed "overt act" numbered "(11)" are uncertain in that the "certain voters" therein referred to are not, nor is any one of them, mentioned by name or described so as to identify the persons therein referred to, nor is it stated that said voters were to the grand jurors unknown, nor does it appear, from the allegations of said supposed "overt act," that said persons or any of them had voted for a candidate for Representative in Congress or for any proposition, candidate, or candidates at the election mentioned in said count, nor that the supposed indication given by the defendant Albert Henry Mathewson that they had "voted right" referred to having voted at said election rather than at some other election or occasion of voting, nor that said indication referred to said voters having voted or omitted to vote for any candidate for Representative in Congress or for any candidate or candidates at said election or referred to any matter, cause, or thing other than said voters having

complied with the law in the manner of their voting; also, so far as appears from said count, John G. Potter, mentioned in said supposed "overt acts" numbered respectively "(12)" and "(13)," Ernest P. Harrington, mentioned in said supposed "overt acts" numbered respectively "(14)," "(15)," "(16)," and "(17)," and Robert L. Congdon, mentioned in said supposed "overt acts" numbered respectively "(23)," "(24)," "(25)," and "(26)," had not, nor had any of them, voted for any candidate for Representative in Congress or for any candidate or candidates at said election, nor, so far as appears from said count, had they or any one of them withheld their votes from any candidate for Representative in Congress or from any candidate or candidates at said election because of any bribe, inducement, direction, reward, or hope of reward; also, so far as appears in said count, William Harney, mentioned in said supposed "overt acts" numbered respectively "(18)," "(19)," "(20)," "(21)," and "(22)," Arthur Battey, mentioned in said supposed "overt acts" numbered respectively "(27)" and "(28)," Henry J. Le Clair, mentioned in said supposed "overt acts" numbered respectively "(29)" and "(31)," Fred McClure, mentioned in said supposed "overt act" numbered "(30)," Samuel Mortimer, mentioned in said supposed "overt acts" numbered respectively "(32)," "(33)," "(34)," and "(35)," Herman Yorke, alias Jake Yorke, mentioned in said supposed "overt act" numbered "(36)," William T. Pierce, mentioned in said supposed "overt acts" numbered respectively "(37)," "(38)," "(39)," and "(40)," Jeffrey Beauchaine, mentioned in said supposed "overt acts" numbered respectively "(43)" and "(44)," and Amede Charpentier, mentioned in said supposed "overt acts" numbered respectively "(45)" and "(46)," had not, nor had any of them, voted or offered or attempted to vote, nor did they or any of them purpose or intend to vote, nor had they or any of them been bribed, directed, influenced, or requested to vote or to withhold their votes or the vote or votes of any one or more of them for any candidate for Representative in Congress, or for any proposition, candidate, or candidates to be voted for at said election; and also, so far as appears from said count, said Fred McClure, mentioned in said supposed "overt act" numbered "(30)," was not qualified to vote at the election mentioned in said count for a candidate for Representative in Congress or for any proposition or candidate thereat; and also, so far as appears in the allegations of the supposed "overt acts" numbered respectively "(36)" and "(37)," the several conversations therein referred to had no reference to said election mentioned in said count.

(vj) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(13)," "(20)," "(21)," "(22)," "(25)," "(26)," "(31)," "(34)," "(35)," "(39)," "(40)," "(44)," and "(46)," so far as appears in said count, was done until after the supposed conspiracy set forth in said count had been consummated.

18. That said first count of said indictment is so unnecessarily voluminous, intricate, and confusing and contains so many indefinite, vague, ambiguous, unrelated, misleading, immaterial, irrelevant, and impertinent allegations and charges, among others, those allegations and charges and the uncertainties and ambiguities therein which are designated and referred to in the last two preceding causes of demurrer numbered "16" and "17," respectively, that it does not inform and does not tend to inform the defendant of the nature and cause of the accusation against him, but, on the contrary, does tend and is liable to confuse, mislead, and prejudice the jury at the trial; and that the defendant should therefore not be required to go to trial on said count, but that said count should be quashed in the interest of justice and a proper regard for the constitutional rights of the defendant under Article VI of amendments to the Constitution of the United States.

19. That the several charges of supposed conspiracy to defraud the United States set forth in said count are not, and each one of them severally is not supported by the allegation of any act done by any party or parties to such supposed conspiracy to effect the object thereof.

To second count.

And the said defendant herein shows to the court the following additional causes of demurrer to the second count of said indictment:

53 20. That the said second count is double in that in said one count it charges the defendants with a supposed conspiracy to defraud the United States set forth in the first paragraph of said count, namely, by means of bribing electors at the election in said count referred to, and also with another supposed conspiracy to defraud the United States set forth in the second paragraph of said count, namely, by committing a wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909.

21. That in addition to the divers uncertainties and ambiguities which are common to both of the counts in said indictment, and for which this defendant has demurred to each of said counts as aforesaid, said second count is so uncertain and ambiguous as to render it impossible for the defendant to understand the several charges therein made against him or to intelligently plead to the same or to properly prepare his defense thereto, in divers additional particulars, among others the following, viz:

(a) In that it does not appear in said count for what candidate or candidates it was agreed by the defendants that electors were to vote or to have voted at the election mentioned in said count in order that the defendants should give or cause to be given to them brass checks with certain stamps thereon, as set forth in said count.

(b) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for giving or withholding

or for having given or withheld a ballot in favor of or against any particular candidate for Representative in Congress or for any candidate whatsoever for that office.

(c) In that it does not appear in said count that it was agreed by the defendants to give such brass checks for voting or not voting or for having voted or not voted for any candidate at said election.

(u) In that it does not appear in said count how or in what manner the United States was to be defrauded by a supposed wilful fraud upon section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count.

(v) In that it does not appear in said count how or in what manner a wilful fraud was agreed to be committed upon said section 3 of chapter 20 of the General Laws of Rhode Island, 1909, as charged in said count, or what such supposed wilful fraud was to be.

(w) In that it does not appear in said count how or in what manner the United States was to be defrauded by perverting or obstructing the due administration of said law, as charged in said count.

(x) In that it does not appear in said count how or in what manner said law was to be perverted or obstructed, as charged in said count.

(y) In that it does not appear how, in what manner, or by what means the defendants, or any of them, did cause, bring about, or assist in the maladministration of said law, or did fraudulently and corruptly administer, enforce, or cause or procure the fraudulent and corrupt administering and enforcing of said law, on the day of said election, as charged in said indictment.

(z) In that it does not appear in said count what person or persons did cause, bring about, or assist in the maladministration of said law, or did fraudulently and corruptly administer, enforce, and cause and procure the fraudulent and corrupt administering and enforcing of said law on the day of said election.

(kk) In that it does not appear in said count how or in what manner or by what means it was the intention of said defendant to deprive the United States of its supposed right to a fair and clean election in said town of Coventry on said November 3rd, A. D. 1914, as charged in said count.

54 (ll) In that it does not appear in said count how or in what manner it was the intention of the said defendant to obstruct, impair, corrupt, and debauch said election, as charged in said indictment.

(mm) In that it does not appear how or in what manner the supposed obstructing, impairing, corrupting, and debauching of said election, as set forth in said count, was to deprive the United States of its supposed lawful right to have a Representative in Congress, who was to be voted for at said election, elected in accordance with law.

(nn) In that it does not appear in said count how or in what manner it was intended by the defendant to prevent the lawful election of a Representative in Congress at said election.

(oo) In that the words "elected fairly," as set forth in said count, are uncertain and ambiguous and do not apprise the defendant with certainty of what is intended thereby.

(pp) In that it does not appear from said count what supposed right, other than to have a Representative in Congress lawfully elected, is asserted or intended to be asserted in said count by the use of the words "lawful right to have a Representative in Congress * * * * elected fairly and in accordance with law."

(qq) In that it does not appear in said count how or in what manner it was intended by the defendants, or any of them, to prevent the election "fairly and in accordance with law" of a Representative in Congress, as charged in said indictment.

22. That, in addition to the divers uncertainties and ambiguities which are common to both of the counts of said indictment, and for which this defendant has demurred to each of said counts as aforesaid, and in addition to the divers other uncertainties and ambiguities in the charging portions of said second count, referred to in the next preceding cause of demurrer as above set forth, the said second count is further vague, uncertain, and ambiguous in its allegations of acts supposed to have been done by one or more of the parties to a supposed conspiracy set forth in said count, to effect the object of such conspiracy, which supposed acts in said count are designated as "overt acts," the same, as set forth in said count, not appearing to have been done to effect the object of such conspiracy, and either not appearing to have any relevancy to such supposed conspiracy or being allegations of supposed facts, which severally, if proved, might tend, with further evidence, to show the commission of an act or acts to effect the object of the supposed conspiracy, but which, of themselves and as stated in said count, do not constitute such an act or acts.

Among the aforesaid uncertainties and ambiguities are the following, viz:

(j) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(3)," "(4)," "(5)," "(6)," "(7)," "(8)," "(9)," "(10)," "(41)," "(42)," and "(47)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count, but, on the contrary, so far as said several supposed "overt acts," as therein alleged are relevant to the supposed offense charged in said count, the same, respectively, pertain to the supposed conspiracy itself and do not constitute an act or acts to effect the object thereof.

(ij) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(1)," "(2)," "(11)," "(14)," "(16)," "(17)," "(18)," "(23)," "(29)," "(30)," "(32)," "(37)," "(38)," "(39)," "(40)," "(43)," "(44)," "(46)," and "(47)" was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count, and, on the contrary, each one of said supposed "overt acts," as in said count charged, as

far as appears therein is not relevant to the offense charged in said count.

55 (iij) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(), " (4)," " (5)," " (6)," " (7)," " (8)," " (9)," " (10)," " (12)," " (13)," " (15)," " (16)," " (19)," " (20)," " (21)," " (22)," " (24)," " (25)," " (26)," " (27)," " (28)," " (29)," " (30)," " (31)," " (33)," " (34)," " (35)," " (36)," " (41)," and " (42)," was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and in no one thereof, as set forth in said count, does it appear that the brass checks, therein respectively charged to have been given or delivered or directed to be given, were, or that any such brass check was proposed or directed to be given or had been given or offered to be given to bribe, influence, corrupt, or debauch any voter or elector or to induce or hire him to vote as directed or suggested by any person or persons, or to the satisfaction of any person or persons, or to give in or withhold his vote for any candidate for Representative in Congress or for any candidate or candidates at the election referred to in said count, or because he had voted or was to vote at said election to the satisfaction of or as directed or suggested by any person or persons, or because he had given in or withheld or was to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates at such election.

(iv) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, " (1)," " (2)," " (5)," " (6)," " (7)," " (8)," " (9)," " (10)," " (13)," " (16)," " (17)," " (20)," " (22)," " (26)," " (29)," " (30)," " (31)," " (35)," " (37)," " (38)," " (39)," " (40)," " (43)," " (44)," " (45)," and " (46)," was, so far as appears in said count, an act done to effect the object of a supposed conspiracy set forth in said count; and in no one thereof, as set forth in said count, does it appear that any money or sum of money, in the statements of said supposed "overt acts" respectively set forth, was or was to be given or had been given to any person, voter, or elector therein referred to, or to any person, voter, or elector to bribe, influence, corrupt, or debauch such person, voter, or elector or as a bribe or reward for voting or having voted at the election mentioned in said count as directed or suggested by any person or persons, or to the satisfaction of any person or persons, or to bribe, influence, or induce him to so vote thereat, or as a bribe or reward for having given in or withheld his ballot for any candidate for Representative in Congress or for any candidate or candidates at said election, or to bribe or induce him to give in or withhold his ballot for any candidate for Representative in Congress or for any candidate or candidates thereat.

(v) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, from " (11)" to " (40)," both numbers inclusive, and from " (43)" to " (46)," both numbers inclusive, was, so far as appears in said count, an act done to effect the

object of a supposed conspiracy set forth in said count; and the allegations of said supposed "overt act" numbered "(11)" are uncertain in that the "certain voters" therein referred to are not, nor is any one of them, mentioned by name or described so as to identify the persons therein referred to, nor is it stated that said voters were to the grand jurors unknown, nor does it appear, from the allegations of said supposed "overt act," that said persons or any of them had voted for a Candidate for Representative in Congress or for any proposition, candidate, or candidates at the election mentioned in said count, nor that the supposed indication given by the defendant Albert Henry Mathewson that they had "voted right" referred to having voted at said election rather than at some other election or occasion of voting, nor that said indication referred to said voters having voted or declined to vote for any candidate for Representative in Congress or for any candidate or candidates at said election, or referred to any matter, cause, or thing other than said voters having complied with the law in the manner of their voting; also, so far as appears from said count, John G. Potter, mentioned in said supposed "overt acts" numbered, respectively, "(12)" and "(13)," Ernest P. Harrington, mentioned in said supposed "overt acts" numbered, respectively, "(14)," "(15)," "(16)," and "(17)," and Robert L. Congdon, mentioned in said supposed "overt
56 acts" numbered, respectively, "(23)," "(24)," "(25)," and "(26)," had not, nor had any of them, voted for any candidate for Representative in Congress or for any candidate or candidates at said election, nor, so far as appears from said count, had they or any one of them withheld their votes from any candidate for Representative in Congress or from any candidate or candidates at said election because of any bribe, inducement, direction, reward, or hope of reward; also, so far as appears in said count, William Harney, mentioned in said supposed "overt acts" numbered, respectively, "(18)," "(19)," "(20)," "(21)," and "(22)," Arthur Battey, mentioned in said supposed "overt acts" numbered, respectively, "(27)" and "(28)," Henry J. LeClair, mentioned in said supposed "overt acts" numbered, respectively, "(29)" and "(31)," Fred McClure, mentioned in said supposed "overt act" numbered "(30)," Samuel Mortimer, mentioned in said supposed "overt acts" numbered, respectively, "(32)," "(33)," "(34)," and "(35)," Herman Yorke (alias Jake Yorke), mentioned in said supposed "overt act" numbered "(36)," William T. Pierce, mentioned in said supposed "overt acts" numbered, respectively, "(37)," "(38)," "(39)," and "(40)," Jeffery Beauchaine, mentioned in said supposed "overt acts" numbered, respectively, "(43)" and "(44)," and Amede Charpentier, mentioned in said supposed "overt acts" numbered, respectively, "(45)" and "(46)," had not, nor had any of them, voted or offered or attempted to vote, nor did they or any of them purpose or intend to vote, nor had they or any of them been bribed, directed, influenced, or requested to vote or to withhold their votes or the vote or votes of any one or more of them for any candidate for Representative in

Congress, or for any proposition, candidate, or candidates to be voted for at said election; and also, so far as appears from said count, said Fred McClure, mentioned in said supposed "overt act" numbered "(30)," was not qualified to vote at the election mentioned in said count for a candidate for Representative in Congress or for any proposition or candidate thereat; and also, so far as appears by the allegations of the supposed "overt acts" numbered, respectively, "(36)" and "(37)," the several conversations therein referred to had no reference to said election mentioned in said count.

(vj) No one of the several supposed "overt acts" set forth in said count and numbered, respectively, "(13)," "(20)," "(21)," "(22)," "(25)," "(26)," "(31)," "(34)," "(35)," "(39)," "(40)," "(44)," and "(46)," so far as appears in said count, was done until after the supposed conspiracy set forth in said count had been consummated.

23. That the charge of supposed conspiracy to defraud the United States set forth in said count is not supported by the allegation of any act done by any party or parties to such supposed conspiracy to effect the object thereof.

By his attorney:

WALTER H. BARNEY.

57 The above-entitled case was called for hearing before the Honorable Arthur L. Brown, United States District Judge, on the indictment and demurrers thereto on, to wit, April 10 and 15, 1916, and was fully heard and argued by the attorneys for the respective parties. The opinion of the court sustaining the demurrers was filed on July 28, 1916, and is in the following language:

58 District Court of the United States, District of Rhode Island.

UNITED STATES	} Indictment No. 114.
v.	
MATTHEW T. GRADWELL ET ALS.	

Opinion on demurrer to indictment, July 28, 1916.

Brown, J. This is an indictment under section 37 of the Criminal Code, charging a conspiracy to defraud the United States by corrupting a general election at which a Representative in Congress was voted for and elected.

The fundamental question is whether this conspiracy statute is to be so broadly construed as to comprehend a conspiracy of this character.

It is not contended that the conspiracy was to commit any offense against the United States, but the indictment rests upon the words "to defraud the United States in any manner or for any purpose." It is well settled that these words are broad enough to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of the Government; U. S. v. Barnow, 239 U. S. 74, 79; Haas v. Henkel, 216 U. S. 462, 479; U. S.

v. Plyler, 222 U. S. 15; U. S. v. Curley, 122 Fed. 738, 130 Fed. 1; but these and all cases cited, except one, relate to functions of the organized Government and not to a step in the organization of the Government.

But a single case has been cited in which the statute has been extended to include fraud in the election of a Member of Congress; U. S. v. Aczel et al, 219 Fed. 917, 921, 923, 984, 938. The learned judge, after a consideration of Curley v. U. S., 130 Fed. 1, 122 Fed. 738, and Haas v. Henkel, 216 U. S. 462, expressed the opinion that

59 "If a conspiracy which is calculated to * * * destroy the value of the operations and reports of the Bureau of Statistics of the Department of Agriculture as fair, impartial, and reasonably accurate, would be to defraud the United States by depriving it of its lawful right and duty of promulgating or diffusing the information so officially acquired in the way and at the time required by department regulations, it is perfectly plain that a conspiracy which is calculated to obstruct and impair, corrupt, and debauch an election where Senators and Representatives in Congress are to be elected, would be to defraud the United States by depriving the Government itself of its lawful right to have such Senators and Representatives elected fairly and in accordance with the law."

Apparently the opinion proceeds on the assumption of an analogy between the obstruction of operations of the constituted Government and obstruction of an election by which the people of the State make their choice of Representatives in Congress. Whether such assumption is justified requires careful examination and further consideration.

Assuming that the United States has such an interest in the election of a Representative in Congress as gives it constitutional power to pass statutes safe-guarding such an election, no such statute is involved, and in the present case we are not directly concerned with any other existing statute passed by Congress to this end. The question is whether section 37 of the Criminal Code, in its inclusion of conspiracies to defraud, was intended as a statute for the protection of elections for Representatives in Congress as well as for the protection of operations of the organized Government.

The existence of a constitutional power in Congress to legislate in respect to the conduct of those elections whereby the people of a particular State choose their Representatives in Congress is of slight assistance in determining whether, by this conspiracy statute, it was intended to do so.

For many years this power was reserved and was not exercised.

In the dissenting opinion of Mr. Justice Lamar in U. S. v. Moseley, 238 U. S. 388, is a reference to the legislation under this
60 power, and to the report of the committee (House Report, No. 18, 53rd Congress, 1st section) as to the policy of Federal legislation concerning elections held under State laws. See also Ex Parte Siebold, 100 U. S. 371; Ex Parte Clarke, 100 U. S. 309.

The question of protecting the United States against the class of frauds which involve merely the relations of the offender and the United States, and the question of legislating respecting the conduct of the elections whereby the people of the respective States choose their Representatives in Congress are substantially distinct; so distinct in substance that it is highly improbable that it was intended to legislate on both together. The Curley case, 122 Fed. 738, 130 Fed. 1; Haas v. Henkel, 216 U. S. 462, 479; and the cases other than the Aczel case, involved no consideration of the relations between State and National Governments, or of the political policy of exercising the constitutional power of Congress to legislate concerning the elections which are primarily the act of the people of the States in choosing their Representatives.

It is of course possible, by the use of abstract terms, to bring under a single classification things which are practically and substantially different. It is not enough, however, that the United States may be able to show that a violation of a constitutional right of the United States was contemplated by conspirators. We must find other than a verbal justification for giving to section 37 of the Criminal Code so broad a scope. It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute because not within its spirit nor within the intention of its makers; *Holy Trinity Church v. U. S.*, 143 U. S. 457, 459.

The right of the United States in respect to these elections is a constitutional right to legislate or not to legislate as is deemed
61 expedient or necessary. With this right, or with its exercise, no interference is charged in the indictment. But it is said that there is also in the Government a right to have its Senators and Representatives elected fairly and in accordance with law, even when Congress has not legislated to define the right. It is inaccurate to say that the indictment charges a conspiracy to defraud the Government of this right, nor can it be said that it is charged that the United States is obstructed in the performance of any active function in respect to this right. It may be said that this theoretical right is violated by doing what is inconsistent with it, and that a violation of the right is in a sense a fraud upon the United States. But in the inquiry whether section 37 was intended to vindicate this right, or to afford protection against its violation, we may consider what protection is otherwise afforded.

In *Ex parte Siebold*, 100 U. S., 392, it was said:

"As a general rule, it is no doubt expedient and wise that the operations of the State and National Governments should, so far as practicable, be conducted separately, in order to avoid undue jealousies and jars and conflicts of jurisdiction and power. But there is no reason for laying this down as a rule of universal application."

In the dissenting opinion in *Ex parte Clarke*, 100 U. S., 420, Mr. Justice Field emphasizes the interest of the States in maintaining the purity of such elections and says:

"I do not think that any apprehension need be felt if the supervision of all elections in their respective States should also be left to them."

This is a statement of a political policy which seems generally to have prevailed over the opposite policy by the repeal of the statutes which were adopted in reconstruction times.

In considering whether section 37 was intended as an exercise of constitutional power to protect against fraud in State elections it is proper to consider that the so-called right of the United States to have duly chosen Representatives in Congress is safeguarded by the primary interest of the people of the States in this respect, and
62 by the laws of the States; and that for this reason congressional legislation on the subject generally has been regarded as unnecessary.

It can not be said that Congress was under any positive duty to legislate for the protection of State elections for Members of Congress, or that there is any presumption of an intent to do so. But the right of the United States to duly elected Congressmen is protected by the Constitution itself in a provision which indicates distinctly the policy of excluding questions of this character from the jurisdiction of the courts as well as of avoiding conflict between State and National Governments, even though the right of Congress to legislate, if necessary, is reserved.

The House of Representatives is made the final judge of the elections, returns, and qualifications of its own Members. The Representatives of all the other States pass upon the question whether the Representative of a particular State has been duly elected. The apparent intent was to remove such questions from executive, judicial, or even legislative control, and to confide them to the Representatives directly chosen by the people. The United States can not be defrauded by the payment of a salary to one whose right to a seat is formally established by the House.

This constitutional provision is the ultimate protection of the United States in its so-called right to have duly elected Representatives.

It is urged that the conspiracy is to deceive and defraud the House of Representatives, a body made up of officers of the United States. In *Lamar v. U. S.*, May 1, 1916, it was held by the Supreme Court that a Member of the House was a legislative officer, and that section 32 of the Criminal Code was applicable to false personation of such an officer. But, as was said in the opinion, the issue in that case was not a constitutional one, but of statutory construction.

Nothing in that opinion serves to abolish the clear distinction pointed out in *Burton v. U. S.*, 202 U. S., 344, 369, 370,
63 between offices created by or existing under the direct authority of the National Government, as organized under the Constitution, and offices the appointments to which are made by the States acting

separately, albeit proceeding in respect to such appointments under the sanction of that instrument. It was said:

"While the Senate, as a branch of the legislative department, owes its existence to the Constitution and participates in framing laws that concern the entire country, its members are chosen by State legislatures and can not properly be said to hold their places 'under the Government of the United States.'"

Primarily a fraud upon a State election for Representatives in Congress is a fraud upon the right not of the United States Government but of the people of a particular State. It may be a fraud on the elective franchise and civil rights of citizens, and the extent to which Congress has exercised its constitutional right in that respect is defined in chapter 3 of the Criminal Code, which is not here invoked.

In chapter 4 "Offenses against the operations of the Government" are treated as a distinct classification, though it may be said that the chapter includes also a section relating to Federal elections, etc. Section 37, which is included in chapter 4, can be given full effect as a statute for the protection of the operations of the Organized Government. If we regard it as a statute relating to the first steps which are taken by the citizens of States in the choice of Representatives and in the organization of the Government, we then may have the United States asserting in the courts the illegality of the action of the people of the State in the choice of Representatives, and this in spite of the constitutional provision that the ultimate decision of the question is not entrusted to any one of the departments of the Government, either executive, judicial, or legislative, but to a special tribunal—the House itself.

It does not matter that the charge is only of conspiracy to elect illegally and of overt acts in pursuance of that conspiracy. If
64 bribery in State elections is not made a Federal offense because of the primary interest of the States in protecting their own elections and because of the provision of a special constitutional tribunal for the trial and settlement of such questions, the same reasons exist against trials for conspiracy to bribe. A charge of a conspiracy to bribe, with bribery as an overt act, may bring before the court substantially the same questions as if the statute were directly against bribery.

The political considerations of the relation between the people of the State and the National Government are substantially the same in both cases.

If, for reasons of public policy, the constitutional power to legislate in the one case has been reserved, it seems inconsistent that it should have been exercised in the other.

Every completed bribery could be charged as a conspiracy to bribe, with overt act of bribery, and thus the courts might be required to adjudicate upon the same matters that are to come before the House or upon which the House already has decided. The rule that

the judicial tribunals must not hamper or embarrass the other departments by prejudging the questions which they will have to decide, or attempting to review the decisions already made (Black's Const. Law, p. 85), affords also a reason for adopting a construction restricting section 37 to frauds affecting the operations of Government and for not extending it to frauds affecting the action of the people of a particular State toward organizing the Government by the election of Representatives.

The policy of leaving to the States themselves the control of elections for presidential electors and of providing for frauds in such elections (see *In re Green*, 134 U. S., 377, 380), seems consistent with the same policy respecting Representatives in Congress.

65 Yet the argument of the United States as to the scope of section 37 would require that a conspiracy to commit fraud in the election of presidential electors should be included.

The right to "duly elected Congressmen" is of the same nature as the right to a duly elected President and Vice President, etc.

In fact, if a violation of a theoretical constitutional right of the Government not declared by statute is to be deemed a fraud, the conspiracy statute will be so broadened as to expand it beyond the scope of legislative foresight. Repugnancy to a reserved constitutional power of Congress to enact law can hardly be a practical test of fraud. Inconsistency with what Congress has power to protect, but has not protected, by law, or with reasons why it might legislate if it saw fit, is not a satisfactory test of what shall constitute a defrauding of the United States under section 37.

As the defendants' brief points out, there is a sharp and clear distinction between a conspiracy to obstruct the administration of a law of the United States and a conspiracy which affects the constitution of one of the great departments of Government. While there are two sides to the matter, one State and one National, the interest of the United States is so well protected otherwise that it cannot be presumed that the conspiracy statute was enacted with any thought of the application which the Government now seeks to make. To so apply the statute takes it out of the definite sphere of protecting and assisting the operation of organized government, into the distinct sphere of State action in performing what is peculiarly a State function—the choice of State Representatives in Congress. It also confers upon the courts an extensive jurisdiction in respect to political matters, with the risk of judicial decisions at variance with the decisions of the tribunal which has power of final decision.

66 It might so affect a candidate for Representative, or a Representative elect, or even a presidential elector, as to impose upon him the duty of appearing in court for vindication of his rights or his character, though the Constitution has provided another tribunal for that purpose, and though statutes have provided a procedure differing from that of the courts. It would impose upon the Executive and upon the Department of Justice the duty of enforcing the law,

of making the necessary investigations, and would bring that one of the executive departments into the control of prosecutions affecting the constitution of a branch of the legislative department.

Aside from the opportunity which would be afforded for making the courts an instrument for influencing political matters we may consider that as a consequence we may have a conspiracy to corrupt a State election tried before the United States Court of another district and in another State. Under the decision in *Hyde v. U. S.*, 225 U. S. 347, overt acts performed in one district by one of the conspirators give jurisdiction to the court of that district as to all the conspirators. This would give to the Department of Justice an opportunity to select a place of trial in some State remote from the actual place of conspiracy, or from the State in which the Representative was elected, because of the commission of some overt act, such as the writing of a letter by one of the conspirators in furtherance of the conspiracy.

It is impossible to believe that in extending the conspiracy statute to embrace frauds other than those upon the revenue it ever occurred to any Members of Congress that they were legislating upon the subject of congressional or presidential elections, or that questions of public policy as to the relations between State and Nation were involved. This subject is so important, and of such special character, that it would have been dealt with specifically and not in an omnibus clause, had it been intended to deal with it at all.

67 The present indictment in my opinion is founded upon an undue extension of the conspiracy act, which carries it beyond its proper sphere and brings it into direct conflict with the policy of noninterference in State elections for Representatives in Congress; a policy evidenced by the general course of legislation or nonlegislation on the subject of the relations of State and National Government in respect to bribery at congressional elections.

Because the subject matter of the regularity of State elections for Representatives is so substantially different from that of any of the other cases of fraud which have been held to be within the conspiracy statute, because the rights of the United States in such an election are to be determined by the House of Representatives itself, and are to be protected by the States which have the primary interest and a more direct interest than the Government itself in the choice of Representatives, because the questions are to such an extent political questions, and for other reasons above stated, I am of the opinion that section 37 can not be so construed as to include the matters set forth in this indictment.

I am, therefore, of the opinion that the demurrers must be sustained on the fundamental ground.

If we assume, however, that section 37 covers a conspiracy to corrupt a State election for Representatives in Congress by bribery of voters, there will remain the question whether this indictment properly charges such a conspiracy. The briefs deal with this matter

at great length, but only a part of the arguments need be considered.

68 It is charged that the defendants conspired "to defraud the United States by corrupting and debauching the general election held in the town of Coventry * * * the third day of November, 1914, at which said election a candidate for Representative in Congress was voted for, chosen, and elected," etc., in manner following:

"Said defendants did devise a scheme to bribe, influence, corrupt, and debauch the voters of the town of Coventry on, to wit, the third day of November, 1914, at which time and place a general election was held for the election of State officers and for a Representative in Congress."

The indictment proceeds to charge "as a part of said conspiracy" various subconspiracies, so to speak, several of which have no apparent or direct relation to the election of a Representative in Congress, but relate to corruption of the so-called general election. One "part of said conspiracy" is to bribe and to vote qualified electors for Representative in Congress. Then follow, as "parts of said conspiracy," charges of conspiracy to defraud by committing a "wilful fraud" upon art. 1, sec. 2 of the Constitution; sec. 2 of chap. 123 of the General Laws R. I., 1909, relating to liquor licenses and other topics; sec. 8, chap. 20, of the General Laws R. I., 1909, respecting bribery at elections; and various other matters too numerous for brief statement. There follows an allegation that in pursuance of "said unlawful and felonious conspiracy," etc., and to effect the object of the same, certain acts were done. The overt acts are thus connected not with any specific part of the conspiracy, but with the one main conspiracy; i. e., to corrupt the "general election."

It is impossible to reject as surplusage those charges which are relate to the election for Representatives in Congress or to the election for State officers.

It is impossible to reject as surplusage those charges which are not connected with the election for Representative in Congress, or

those charges which ambiguously refer to "a general election,"
69 comprehending the State officers as well as a Representative in Congress.

By thus confusing elections over which Congress has no control and elections over which it may constitutionally exercise control, and by referring the overt acts to an equivocal unit, the "general election," we have irrelevant and relevant matters so firmly entangled that it seems impossible to extricate them. The allegations which do not appear to have a connection with, or are only argumentatively connected with, the election of Representative, can not be rejected, for if this were done it would be impossible to say whether in the opinion of the grand jury the overt acts were in pursuance of what was rejected or of what was retained.

Were this indictment to stand it would be possible for the United States to introduce a large amount of evidence relating to the elec-

tion of State officers, or to other State matters, or of so ambiguous a character that to what it did relate could only be guessed.

The decision in *re Coy*, 127 U. S., 731, which relates to returns covering both State and Federal elections, affords not the slightest support for this indictment, or for the theory of a "general election" upon which it is drawn. On the contrary, it is essential that the indictment should be strictly confined to the election for Representatives and should avoid all confusion with State elections. *Blitz v. U. S.*, 153 U. S., 308; *U. S. v. Morrissey*, 32 Fed., 147, 152.

I am of the opinion, therefore, that the indictment is demurrable also on the ground that the indictment is so vague, uncertain, insufficient, and duplicitous in its allegations that the defendants are not sufficiently apprised of the nature of the charge against them to enable them to prepare their defense thereto. Even if it be a crime under section 37 to conspire to corrupt an election for a Representative in Congress, I am of the opinion that the defendants
70 would be deprived of their right to be informed of the nature of the offense by putting them to trial upon this indictment.

I desire to acknowledge the great diligence, research, and ability shown alike by counsel for the United States and for the defendants in the preparation of the comprehensive briefs upon the important questions that are raised in this case.

For the reasons stated in the opinion the demurrers are sustained.

And on, to wit, August 24, 1916, there was entered the following:

71 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rath- bun, Lewell Whitman, Samuel Franklin, Al- bert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, defendants.	} Indictment #114. Violation of sec- tion 37, Crimi- nal Code.
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Order sustaining demurrers to indictment. (Entered Aug. 24, 1916.)

This cause having come on to be heard upon the demurrers of the defendants to the indictment, and having been argued by counsel,

It is considered that said demurrers be, and the same hereby are, sustained to each count of the indictment.

Entered as the order of this court this 24 day of August, A. D. 1916.

WILLIAM P. CROSS, *Clerk.*

Enter August 24, 1916.

ARTHUR L. BROWN,

*United States District Judge for the
District of Rhode Island.*

72 Thereafter, to wit, on August 24, 1916, there were filed by the plaintiff a petition for writ of error and assignment of errors, and the petition was allowed and the writ of error issued on said day.

And thereafter on, to wit, August 24, 1916, a citation was issued returnable at the Supreme Court of the United States in the city of Washington, in the District of Columbia, on the 22nd day of September next.

73 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.

Violation of sec-
tion 37, Crimi-
nal Code.

Petition for a writ of error. (Filed August 24, 1916.)

To the honorable Arthur L. Brown, judge of said court:

Now comes the United States of America, by Harvey A. Baker, United States attorney for the District of Rhode Island, and respectfully shows to the court that on the twenty-fourth day of August, A. D. 1916, the court made an order in said cause sustaining the demurrers of the defendants to the indictment in said cause, and your petitioner, feeling itself aggrieved by the said ruling of the court, entered therein as aforesaid, herewith petitions the court for an order allowing the petitioner to prosecute a writ of error to the Supreme Court of the United States under the law (act approved March 2, 1907, 34 Statutes at Large, page 1246) in such case made and provided.

The premises considered, your petitioner prays that a writ of error be issued in this behalf to the Supreme Court of the United States, sitting at Washington, D. C., for the correction of the errors complained of and hereby assigned.

HARVEY A. BAKER,

United States Attorney, for Petitioner in Error.

75 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.

Violation of sec-
tion 37, Crimi-
nal Code.

Order allowing writ of error. (Entered August 24, 1916.)

The foregoing cause coming on to be heard upon petition for writ of error and assignment of errors submitted herewith, it is upon

consideration thereof ordered that said petition be granted and writ of error allowed.

Entered as the order of this court this 24 day of August, A. D. 1916.

WILLIAM P. CROSS, *Clerk.*

Enter August 24, 1916.

ARTHUR L. BROWN,

United States District Judge for the District of Rhode Island.

76 In the United States District Court for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.
Violation of sec-
tion 37, Crimi-
nal Code.

Assignment of errors. (Filed August 24, 1916.)

Now comes the United States of America, plaintiff in said cause, by Harvey A. Baker, United States attorney for the district of Rhode Island, and in connection with the plaintiff's petition for a writ of error in this cause, assigns the following errors upon which plaintiff in error relies to reverse the judgment of the court herein, as appears of record, to wit:

I.

The court erred in sustaining the demurrers to each count of the indictment in said cause.

II.

The court erred in holding that the conspiracy to defraud the United States set out in each count of the indictment is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

77

III.

The court erred in holding that the conspiracy to defraud the United States set out in each count of the indictment related not to the functions of organized government but to a step in the organization of the Government.

IV.

The court erred in holding that a conspiracy to defraud the United States relating to a step in the organization of government is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

V.

The court erred in holding that section 37 of the Criminal Code in its inclusion of conspiracies to defraud the United States was not intended as a statute for the protection of elections for Representative in Congress.

VI.

The court erred in holding that a conspiracy to deprive the United States of the right to have its Representatives in Congress elected by the people secured to the United States by section 2 of article 1 of the Constitution is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

VII.

78 The court erred in holding that each count of the indictment did not set out a conspiracy to defraud the United States of the right to have its Representatives in Congress elected fairly and in accordance with law, punishable under section 37 of the Criminal Code.

VIII.

The court erred in holding that a conspiracy to defraud the United States of the right to have its Representatives in Congress elected fairly and in accordance with law is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

IX.

The court erred in holding that a conspiracy to fraudulently procure the statutory salary of a Representative in Congress for a man who was to be illegally and fraudulently elected is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

X.

The court erred in holding that a conspiracy to deceive and defraud the House of Representatives is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XI.

The court erred in holding that a conspiracy to procure the election and return of a Member of the House of Representatives by means of the bribery of persons qualified to vote for Representative in Congress is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

79

XII.

The court erred in holding that a conspiracy to violate in the conduct of an election for a Representative in Congress the State laws against bribery of electors made for the protection of elections of Representatives in Congress is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XIII.

The court erred in holding that a conspiracy to deprive the United States of the protection of the State laws against bribery in the election of Representatives in Congress is not a conspiracy to defraud the United States punishable under section 37 of the Criminal Code.

XIV.

The court erred in holding that a conspiracy to violate a constitutional right of the United States not declared by statute is not such a conspiracy to defraud as is punishable by section 37 of the Criminal Code.

XV.

The court erred in holding that section 37 of the Criminal Code was not intended as an exercise of constitutional power to protect the United States against fraud in elections of Representatives in Congress.

XVI.

The court erred in holding that the House of Representatives is a special constitutional tribunal for the trial and settlement of bribery in the elections of Representatives in Congress.

80

XVII.

The court erred in holding that a fraud upon a State election for Representative in Congress primarily is not a fraud upon the right of the United States but of the people of the particular State.

XVIII.

The court erred in holding that the House of Representatives is not a body made up of officers of the United States.

XIX.

The court erred in holding that a conspiracy to deprive the United States of its right to a duly elected Congressman is not such a conspiracy to defraud the United States as is punishable under section 37 of the Criminal Code.

XX.

The court erred in holding that each count of the indictment did not set forth a plan to defraud the United States, which is punishable under section 37 of the Criminal Code, for the reason that it carries the conspiracy statute beyond its proper sphere and brings it into direct conflict with the policy of noninterference in State elections for Representative in Congress.

XXI.

The court erred in holding that section 37 of the Criminal Code can not be construed so as to include the matters set forth in this indictment.

81

XXII.

The court erred in holding that a conspiracy, which included as one of the purposes of the plan to defraud the United States the corruption of the election of a Representative in Congress and as another purpose the corruption of the election of State officers, who were to be elected at the same time, is not a conspiracy to defraud the United States punishable under section 37 of the Criminal Code.

XXIII.

The court erred in holding that the acts alleged to have been done to effect the object of the conspiracy, i. e., the overt acts alleged in each count of the indictment, were not good overt acts within the meaning of section 37 of the Criminal Code.

XXIV.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must, where the plan of the conspiracy includes several ends and purposes, be an act in itself done to accomplish the end and purpose of the plan which is criminal.

XXV.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must, where the plan of the conspiracy includes several ends and purposes, be an act in itself done to accomplish the end and purpose of the plan on which the jurisdiction of court is based.

82

XXVI.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act, required by section 37 of the Criminal Code, is not a good overt act within the meaning of section 37 of the Criminal Code where it is an act that tends to accomplish the entire plan, which plan has several purposes, part of which are criminal and part of which are innocent.

XXVII.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must be an act that in itself shows criminality.

XXVIII.

The court erred in holding that the act done to effect the object of the conspiracy, i. e., the overt act required by section 37 of the Criminal Code, must be an act that in itself shows jurisdiction.

XXIX.

The court erred in holding that it must appear in what manner the acts done to effect the object of the conspiracy, i. e., the overt acts alleged in accordance with the requirements of section 37 of the Criminal Code, would tend to effect the object of the conspiracy.

83

XXX.

The court erred in holding that under section 37 of the Criminal Code the act done to effect the object of the conspiracy, i. e., the overt act alleged, must show in what manner it would tend to effect the object of the conspiracy on which the jurisdiction of the court was based where there were several objects to the conspiracy set out, some of which were criminal by virtue of the jurisdiction of the court and some innocent.

Wherefore the United States of America, as plaintiff in error, prays that the judgment of said court be reversed.

HARVEY A. BAKER,
United States Attorney.

84 In the District Court of the United States for the District of Rhode Island.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.

MATHEW T. GRADWELL, EMANUEL CARPENTER,
Jesse Carr, George Kresgie, John Colvin,
Ellery Hudson, Irving Hudson, James Rath-
bun, Lewell Whitman, Samuel Franklin, Al-
bert Henry Mathewson, George Warner,
Charles Keach, and Earl Dodge, defendants.

Indictment #114.
Violation of sec-
tion 37, Crimi-
nal Code.

Præcipe.—Directions to clerk to make up transcript.

To William P. Cross, Esq., clerk of the United States District Court for the District of Rhode Island:

You are hereby requested to prepare a transcript of record to be filed in the Supreme Court of the United States, pursuant to the writ of error allowed in the above-entitled cause, and including in such transcript of record the following and no other papers, to wit:

1. The writ of error.
 2. The indictment filed in said cause on June 28, 1915.
 3. The demurrers of the defendants to said indictment filed on November 24, 1915.
 4. The order and final judgment rendered in said court on August 24, 1916, sustaining the demurrers to the indictment.
 5. The petition for a writ of error.
 6. The order granting the writ of error.
 - 85 7. Assignment of errors.
 8. Citation on writ of error.
 9. Præcipe.
 10. The opinion of the court giving its reasons for sustaining said demurrers.
 11. Clerk's certificate.
- And you will omit all other papers.

HARVEY A. BAKER,
United States Attorney for Plaintiff in Error.

Citation of writ of error.

UNITED STATES OF AMERICA, ss:

The President of the United States to Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Warner, Charles Keach, and Earl Dodge, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, in the District of Columbia, on the 22d day of September next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Rhode Island, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Brown, judge of the District Court of the United States for the District of Rhode Island this twenty-fourth day of August, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

ARTHUR L. BROWN,
*United States District Judge,
District of Rhode Island.*

87 I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of Mathew T. Gradwell, James Rathbun, George Warner, and Albert Henry Mathewson, defendants, and acknowledge receipt of the præcipe for making transcript and assignment of errors.

WALTON H. BARNEY,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept personal service of this citation on behalf of Ellery Hudson, Irving Hudson, and Earl Dodge, defendants, and acknowledge receipt of the præcipe for making transcript and assignment of errors.

ALEXANDER L. CHURCHILL,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of George Kresgie, Lewell Whitman, John Colvin, and Charles Keach, defendants, and acknowledge receipt of the præcipe for making transcript and assignment of errors.

CHARLES A. WALSH,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of Jesse Carr and Samuel Franklin, defendants, and acknowledge receipt of the praecipe for making transcript and assignment of errors.

WAYNE H. WHITMAN,
Counsel for said Defendants.

I hereby, this 25th day of August, 1916, accept due and legal personal service of this citation on behalf of Emanuel Carpenter, defendant, and acknowledge receipt of the praecipe for making transcript and assignment of errors.

JAMES E. DOOLEY,
Counsel for Emanuel Carpenter.

(Indorsed:) In the District Court of the United States, for the District of Rhode Island. United States of America, plaintiff, vs. Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr, George Kresgie, John Colvin, Ellery Hudson, Irving Hudson, James Rathbun, Lewell Whitman, Samuel Franklin, Albert Henry Mathewson, George Wagner, Charles, Keach and Earl Dodge, defendants. Citation on writ of error. Filed August, 1916. Clerk.

88

Clerk's certificate.

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

I, William P. Cross, clerk of the District Court of the United States for the District of Rhode Island, do hereby certify that the foregoing is a true copy of the record and all the proceedings had in an indictment entitled No. 114, United States of America, plaintiff, vs. Mathew T. Gradwell, et als., defendants., in the District Court determined, together with the plaintiff's petition for writ of error, order allowing same, assignment of errors, the opinion of the district court, praecipe, the original citation on appeal with the acknowledgment of service indorsed thereon.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Providence, in said district, this 12th day of September, A. D. 1916.

[SEAL.]

WILLIAM P. CROSS, *Clerk.*

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(Indorsed:) File No. 25,513, Rhode Island, D. C. U. S. Term No. 683. The United States, plaintiff in error, vs. Mathew T. Gradwell, Emanuel Carpenter, Jesse Carr et al. Filed September 28th, 1916. File No. 25,513.